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Monday
March 21, 1988

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

TAMPA, FL

WHEN: March 24; at 9:30 a.m.
WHERE: Auditorium
Tampa-Hillsborough County Public Library
900 North Ashley Drive, Tampa, FL.
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FORT LAUDERDALE, FL

WHEN: March 25; at 10:00 a.m.
WHERE: Room 8 A and B
Broward County Main Library
100 S. Andrews Avenue, Fort Lauderdale, FL.
RESERVATIONS: Call the St. Petersburg Federal Information Center on the following local numbers:

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WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Carolyn Payne, 202-523-3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill Federal Building
Auditorium,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617-565-8123

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 14; Doc. No. 5101S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Tuesday, September 29, 1987 at 52 FR 36400. The interim rule amended the General Crop Insurance Regulations (7 CFR Part 401), by redefining the insurance period for all insured crops to provide that insurance attaches on the later of when the crop is planted or when the application is properly completed, signed, and delivered to the service office in addition to the other attachment references therein. The intended effect of this rule is to prevent the possibility of adverse selectivity resulting in an automatic replant payment.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, September 29, 1987, FCIC published an interim rule, in the **Federal Register** at 52 FR 36400, amending the General Crop Insurance Regulations (7 CFR Part 401), by redefining the insurance period for all insured crops to provide that insurance attaches on the later of when the crop is planted or when the application is properly completed, signed and delivered to the service office in addition to the other attachment references therein.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 401

Crop insurance, General crop insurance regulations.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Tuesday, September 29, 1987, at 52 FR 36400, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 23, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–6081 Filed 3–18–88; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amdt. No. 8; Docket No. 5484S]

General Crop Insurance Regulations; Canning and Processing Bean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Wednesday, March 2, 1988, at 53 FR 6559, amending the General Crop Insurance Regulations (7 CFR Part 401) to add a new section § 401.118, the Canning and Processing Bean Endorsement. In that publication, the State of Utah was inadvertently omitted from the section listing those states where canning and processing bean crop insurance is otherwise authorized to be offered, and where bean acreage by type may be divided into more than one unit under certain conditions. This notice is published to correct that error.

EFFECTIVE DATE: March 21, 1988.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: FR Document 88–4529, appearing at pages 6559 through 6561, previously corrected at 53 FR 7878, is further corrected as follows:

On page 6560, in Column 2, section 5 of 7 CFR 401.118, the Canning and Processing Bean Endorsement, is corrected to read as follows:

§ 401.118 Canning and Processing Bean Endorsement.

* * * * *

5. *Unit division.*

For Idaho, Michigan, Minnesota, Oregon, Tennessee, Utah, Washington, and Wisconsin bean acreage by type (snap or lima) that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

a. Acreage planted to the insured beans is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage can be easily determined; and

(2) The beans are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured beans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Beans planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable beans are part of the irrigated unit. Production on the total unit, both irrigated and non-irrigated, will be combined to determine the yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

Done in Washington, DC, on March 10, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–6082 Filed 3–18–88; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amdt. No. 26; Doc. No. 5379S]

General Crop Insurance Regulations; Texas Citrus Tree Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new subpart, 7 CFR 401.134, be known as the Texas Citrus Tree Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection of citrus trees in Texas in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is established as November 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.134, the Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring citrus tree in Texas.

The provisions for insuring citrus trees contained in 7 CFR 401.134 will supersede those provisions contained in 7 CFR Part 440, the Texas Citrus Tree Crop Insurance Regulations, effective with the beginning of the 1989 crop year. The present policy contained in 7 CFR Part 440 will be terminated at the end of the 1988 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 440 by separate document so that the provisions therein are effective only through the 1988 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Texas Citrus Tree Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring Texas citrus trees as follows:

1. Section 1—Rio Red grapefruit trees have been added to the Star Ruby (Type IV) designation and Ruby Red grapefruit trees have been designated type V. These changes place tree insurance units on the same basis as the citrus fruit insurance units.

2. Section 2—Cyclone was replaced by excess wind as an insured cause of loss. This change provides insurance against damage from shear wind of defined force as well as cyclonic winds

3. Section 4—Language has been added to clarify that trees less than one year old on June 1 are limited to 33% of the normal amount of insurance.

4. Section 7—Add unit division to include language indicating that additional premium may be required for unit division.

5. Section 12—Add definitions of excess moisture, excess wind, and nor contiguous land.

On Friday, January 8, 1988, FCIC published a notice of proposed

rulemaking (NPRM) in the **Federal Register** at 53 FR 507 to provide the provisions of crop insurance protection on citrus trees in Texas in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

In reviewing the provisions for insuring Texas citrus trees, FCIC has determined that some clarification is needed in three sections, as follows:

1. Subsection 1.b.(3)—Add the words "or nursery stock" following the words "onto existing root stock" and before the words "within the one year period prior to * * *"

This term is added to clarify the intention of FCIC with respect to not insuring any citrus trees which have been grafted onto nursery stock and which are subsequently sold before grafts were known to have survived.

2. Subsections 6.a. (1) and (2)—Delete the word "cyclone" and substitute the words "excess wind".

Cyclone was replaced by excess wind as an insurable cause of loss in the NPRM. These two references were inadvertently not changed.

3. Subsection 7.b.—Delete the last sentence reading "Production that is commingled between optional units will cause those units to be combined".

This reference does not apply to tree crop insurance and was inadvertently included in the NPRM.

Since the provisions contained in these regulations must be filed in the services offices by February 28, 1988, in order to be effective for the 1989 crop year, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Texas Citrus Tree Endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.134 Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years, to read as follows:

§ 401.134 Texas Citrus Tree Endorsement.

The provisions of the Texas Citrus Tree Endorsement for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Texas Citrus Tree Endorsement

1. Insured crop.

a. The crop insured will be any of the following insurable citrus tree types (hereafter called trees) you elect:

Type I Early and mid-season orange trees;
Type II Late orange (including Temple) trees;
Type III Grapefruit trees except types IV and V;
Type IV. Rio Red and Star Ruby grapefruit trees; or
Type V Ruby Red grapefruit trees;

which are set out for the purpose of harvesting citrus as fresh fruit or juice.

b. In addition to the citrus trees not insurable in section 2 of the general crop insurance policy, we do not insure any citrus trees:

(1) Which are not irrigated;

(2) For the crop year the application for insurance is filed unless we inspect the acreage and consider it acceptable;

(3) Which have been grafted onto existing root stock or nursery stock within the one year period prior to the date insurance attaches; or

(4) In any established groves which do not have the potential to produce at least 70 percent of the area average yield for the type and age, unless we agree in writing to insure such trees;

c. We may exclude from insurance or limit the amount of insurance on any acreage which was not insured by us the previous crop year.

2. Causes of loss.

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period:

(1) Freeze;
(2) Excess moisture;
(3) Hail;
(4) Fire;
(5) Tornado;
(6) Excess wind; or
(7) Failure of the irrigation water supply;

unless those causes are excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any damage to trees due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove.

3. Report of acreage, share, number, type, age of trees, and practice (Acreage Report).

a. In addition to the information required in section 3 of the general crop insurance policy, you must report:

(1) The number and type of trees;

(2) The date of original set out; and

(3) The date of replacement or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years.

b. If any insurable acreage of trees is set out after June 1, and you elect to insure such acreage during that crop year, you must report to us within 72 hours of the completion of set out the acreage, practice, type, number of trees, date set out is completed, and your share.

c. The date by which you must annually submit the acreage report is June 30 of the calendar year in which insurance attaches.

4. Amounts of insurance.

a. The amount of insurance shown on the actuarial table will be reduced for any acreage which has not reached the fourth growing season after being set out or the fifth year following dehorning. The amount of insurance will be the product obtained by multiplying the amount of insurance contained in the actuarial table by:

(1) 33 percent the year of set out or the year following dehorning (insurance will be limited to this amount until trees that are set out are one year of age or older on June 1);

(2) 60 percent the first growing season after being set out or the second year following dehorning;

(3) 80 percent the second growing season after being set out or the third year following dehorning; or

(4) 90 percent the third growing season after being set out or the fourth year following dehorning.

b. The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

5. Annual Premium.

The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance period.

a. In lieu of section 7 of the general crop insurance policy, insurance attaches on June 1 for each crop year except that for the first crop year insured if the application is accepted by us after June 1:

(1) The insurance against excess wind and freeze will attach the tenth day after the properly completed application is submitted to the service office; and

(2) If any insurable acreage is set out after June 1, insurance will attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion, except for excess wind and freeze; and

(3) For all other instances, insurance attaches on the date the application is accepted.

b. The insurance period ends at the earlier of:

(1) May 31 following the beginning of the crop year; or

(2) Total destruction of the insured trees.

7. Unit division.

a. Citrus tree acreage that would otherwise be one unit, as defined in section 17 of the

general crop insurance policy, may be divided by citrus type.

b. Citrus tree acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and the insured trees are located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided.

8. Notice of damage or loss.

a. In lieu of section 8 of the general crop insurance policy and in case of damage or probable loss, you must within 10 days give us written notice of:

(1) The dates of damage; and

(2) The causes of damage.

b. If you are going to claim an indemnity on any unit, we must inspect all insured acreage and damaged trees before pruning, dehorning, or removal.

9. Claim for indemnity.

a. In addition to the requirements in section 9 of the general crop insurance policy you must furnish records to us concerning all trees on the unit.

b. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with subsection 9.c., the following applicable amount:

(a) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(b) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(c) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) Multiplying this result by your share.

c. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) The percent of damage to count will be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred, (any trees with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out);

(b) Any grove with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out; or

(c) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union, (however, no damage will be considered if more than 12 inches of wood above the bud union is alive).

(2) Any percentage of damage by uninsured causes, will not be included in the percent of damage.

d. The amount of indemnity will be determined at the earlier of:

(1) Total destruction of the trees; or

(2) The calendar date for the end of the insurance period.

10. *Cancellation and termination dates.*

The cancellation and termination dates are May 31 prior to the date insurance attaches.

11. *Contract changes.*

The date by which contract changes will be available in your service office is February 28 preceding the cancellation date.

12. *Meaning of terms.*

a. "*Crop year*" means the period beginning June 1 and extending through May 31 of the following year and is designated by the calendar year in which the insurance period ends.

b. "*Dehorning*" means the cutting back of each scaffold limb to a length that is no longer than ¼ the height of the tree.

c. "*Destroyed*" means trees which are damaged to the extent that removal is required.

d. "*Excess wind*" means a natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

e. "*Freeze*" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause tree damage.

f. "*Non-contiguous land*" means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

g. "*Set out*" means transplanting the citrus tree from the nursery to the grove.

h. "*Total destruction*" means the occurrence of damage by unit to the trees which have been set out more than one year in excess of 80 percent.

Done in Washington, DC on February 16, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6083 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 413

[Amdt. No. 1; Doc. No. 5445S]

Texas Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Friday, July 24, 1987, at 50 FR 27781. The interim rule amended the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), effective for the 1987 calendar year only, by extending the date for filing contract changes specified in the policy for insuring such citrus in Texas. The intended effect of this rule was to allow additional time for FCIC to complete actuarial studies of this program for possible amendment of the contract for the 1988 crop year.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, July 24, 1987, FCIC published an interim rule in the **Federal Register** at 50 FR 27781, amending the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), by extending the date for filing contract

changes specified in the policy for insuring citrus in Texas. The intended effect of this rule was to allow additional time for FCIC to complete actuarial studies of this program for possible amendment of the contract for the 1988 crop year.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 413

Crop insurance, Texas Citrus Crop Insurance Regulations.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Friday, July 24, 1987, at 50 FR 27781, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 24, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–6086 Filed 3–18–88; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 420

[Amdt. No. 1; Doc. No. 5396S]

Grain Sorghum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Grain Sorghum Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (401.113, Grain Sorghum Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 420 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 34670, to maintain the effectiveness of the present Grain Sorghum Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 34670 thereby amending the subpart heading to provide that 7 CFR Part 420 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), as follows:

PART 420—[AMENDED]

1. The authority citation for 7 CFR Part 420 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 420 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on February 25, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6084 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 440

[Amdt. No. 3; Doc. No. 5421S]

Texas Citrus Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for 1988 only, by extending the date for filing contract changes specified in the policy for insuring citrus trees. The intended effect of this rule is to (1) allow additional time for FCIC to file actuarial data on this program in the service offices prior to issuing the provisions of crop insurance protection on citrus trees as an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops: and, (2) allow policyholders sufficient time to study the changes in the policy and to determine their insurance needs.

DATES: This interim rule is effective upon publication in the **Federal Register**. Written comments, data, and opinions on this interim rule must be submitted not later than May 20, 1988.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains unchanged as November 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for insuring citrus trees (7 CFR Part 440) provides that any changes in the contract must be placed on file in the service office by February 28. The contract consists of the application, the policy, and the actuarial table. FCIC is completing actuarial data prior to issuing the program as an endorsement to the General Crop Insurance Policy (7 CFR Part 401), beginning with the 1989 crop year.

In order to allow time for completion of this project and the transition of the program to an endorsement format, FCIC has determined that the date by which such changes are required to be placed on file in the service office shall be extended from February 28, 1988 to March 31, 1988, for Texas Citrus Tree insurance.

FCIC is soliciting public comment on this interim rule for 60 days after publication in the **Federal Register**. Written comments on this interim rule should be sent to the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Any written comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 440

Crop insurance, Texas Citrus Trees.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith amends the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1988 calendar year only in the following instances:

PART 440—[AMENDED]

1. The authority citation for 7 CFR Part 440, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 440.7(d)16 is revised to read as follows:

§ 440.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by February 28 (March 31, effective for the 1988 calendar year only), preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

* * * * *

Done in Washington, DC on February 19, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6085 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9074]

General Motors Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1980 consent order with respondent (45 FR 44920) by changing the accounting procedures for the sale of repossessed cars and light trucks. The Commission has replaced the repossession accounting procedure with a "repossession guide" which respondent must provide to its dealers.

DATES: Consent Order issued June 11, 1980. Modified Order issued March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Thomas Massie, FTC/S–4631, Washington, DC 20580. (202) 326–2177 or 326–2982.

SUPPLEMENTARY INFORMATION: In the Matter of General Motors Corporation, General Motors Acceptance Corporation. The prohibited trade practices and/or corrective actions, as set forth at 45 FR 44920 remain unchanged.

List of Subjects in 16 CFR Part 13

Repossessed vehicles, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 9074]

In the matter of General Motors Corporation, General Motors Acceptance Corporation.

Order Reopening The Proceeding and Modifying Cease and Desist Order

Commissioners

Daniel Oliver, Chairman
Patricia P. Bailey
Terry Calvani
Mary L. Azcuenaga
Andrew J. Strenio, Jr.

On November 5, 1987, General Motors Corporation (GM) and General Motors Acceptance Corporation (GMAC) filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and Part VIII.B of the order in this matter, to reopen the proceeding and modify the order issued against GM and GMAC on June 11, 1980, in Docket No. 9074, 95 F.T.C. 825.

This matter arose out of allegations that certain franchised General Motors dealerships and certain dealerships owned in whole or in part by GM were failing to account for and pay to defaulting customers surpluses generated by the sale of repossessed motor vehicles.[1] A complaint was issued against GM, GMAC and a franchised GM dealer on February 10, 1976. Similar complaints were issued against Chrysler Corporation (D.9072), Ford Motor Company (D.9073), their respective credit subsidiaries, and a franchised dealer of each. GM and GMAC consented to the order that is the subject of this decision. Similar consent orders were issued against Chrysler and Ford and their respective credit subsidiaries.

A principal feature of each of these orders is a repossession accounting procedure that dealers of these automobile manufacturers were to use in conjunction with the disposition of repossessed motor vehicles returned to them under a recourse or repurchase agreement. The repossession accounting procedure was intended to bring about the uniform calculation of surpluses and deficiencies resulting from the resale of repossessed motor vehicles by Chrysler, Ford, and GM dealers. Each of these orders also contained a most favored corporation provision. In the GM order that provision is found at Part VIII.B. It reads as follows:

> In the event any of the proceedings presently bearing Docket Nos. 9072, 9073 or 9074 result in a final adjudicated or consent order prescribing standards less restrictive (including deferral to state law) than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a General Motors respondent's request pursuant to Section 2.51 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this order to such less restrictive standards proscribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive.

It is implicit in the application of uniform standards such as the repossession accounting standards that GM, Ford, and Chrysler have required their dealers to follow under their respective orders, that those applying such standards will bear similar added costs. A function of uniformity is to avoid creating an artificial competitive imbalance among those affected. The purpose of Part VIII.B is to avoid creating such a competitive imbalance if a similarly situated respondent is able to demonstrate the need for less restrictive standards. On April 3, 1987, we issued our decision modifying the order against Ford and Ford Credit in Docket No. 9073. We concluded, based on the materials submitted, that it was in the public interest to defer to state law with respect to the subject matter enumerated in clauses (1) and (2) of the most favored corporation provision set out above and accordingly ordered modification to that order consistent therewith.

Since there is now a final order in a related proceeding prescribing less restrictive standards with respect to enumerated subject matter and GM and GMAC having petitioned to modify their order in the same manner as that granted Ford, we conclude that the modifications requested are warranted.

It Is Therefore Ordered that the proceeding be reopened and that the final order issued June 11, 1980, in Docket No. 9074 be, and it hereby is modified to read as follows:

I. Definitions

It Is Ordered that for purposes of this Order the following definitions shall apply:

A. "General Motors respondents" or "respondents" means General Motors Corporation ("General Motors") and General Motors Acceptance Corporation ("GMAC"), corporations. References to General Motors respondents shall include their successors, assignees, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or devices through which they act in the United States. However, references to General Motors shall not include GMAC and references to General Motors respondents shall not include dealerships. The requirements imposed on the General Motors respondent shall apply only to transactions within the United States.

B. "Vehicle" means an automobile or truck with a gross vehicle weight rating less than 11,000 pounds (4,990 kilograms) or a motor home. The term includes all parts, accessories and appurtenances of the vehicle. A van is deemed a "truck."

C. "Dealership" or "dealer" means a corporation, partnership or proprietorship as to its operations within the United States pursuant to a Sales and Service Agreement with General Motors' Buick, Cadillac,

[1] The obligation of the secured creditor or his guarantor to account for and pay surpluses arises out of Article Nine of the Uniform Commercial Code (UCC), which has been adopted by 49 states and the District of Columbia. Under the UCC, a secured party, after repossession and disposition of the collateral, is required to account to the defaulting buyer for any surplus of proceeds from the sale or disposition of the collateral in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees. *See* U.C.C. 9–504.

Chevrolet, Oldsmobile, or Pontiac divisions, or the GMC Truck Division.

D. "Retail sale" means the sale of a vehicle by a dealer, other than for purposes of resale (e.g., sales to dealers or wholesalers), lease or rental, to a customer who is not a fleet purchaser.

E. "Recourse financing" means the financing of a retail sale subject to an agreement between a financing institution and a dealership (generally called a "repurchase", "recourse," or "guaranty" agreement) which provides that the dealership is obligated to pay off the outstanding obligation to the financing institution after receiving a transfer of the repossessed vehicle.

F. "Equity dealership" means a dealership in which General Motors holds 50 percent or more of the voting stock or is entitled to elect 50 percent or more of the board of directors.

G. "Financing customer" means a purchaser of a vehicle from a dealership by means of a retail installment contract.

H. "Disposition" or "dispose" means a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and returned to it by or for a financing institution pursuant to a recourse agreement. Such sale or lease includes only transactions with an independent third party; i.e., it does not include a sale or lease to the financing institution, the dealership or a representative of either. Disposition or dispose shall not mean the transfer of a repossessed vehicle to a dealership pursuant to a recourse agreement, or to a person or firm liable under a guaranty, endorsement, or recourse agreement covering the repossessed vehicle, nor mean a sale subsequent to a judicial sale.

I. "Proceeds" means whatever is received for a repossessed vehicle upon its disposition, as proceeds are described in the Initial Compliance Report. Among other things, it does not include charges for separately priced warranties and service contracts itemized in the sales contract or lease.

J. "Allowable expenses" means commercially reasonable expenses allowable under applicable state law. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for disposition and disposing of the vehicle, and not otherwise reimbursed to the dealership disposing of the vehicle.

K. "Contract balance" means (1) the unpaid balance as of the date of repossession, less any payments made thereafter and less applicable finance charge, insurance premium and service contract rebates deducted by the financing institution, plus (2) other charges authorized by contract or law and actually assessed or incurred prior to repossession. It may reflect a deduction for insurance, service contract and warranty payments received or to be received by the financing institution.

L. "Surplus" means:

+ proceeds
+ applicable insurance or warranty reimbursements received by the dealership or financing institution unless these reimbursements were deducted in computing the contract balance
+ any other applicable rebates or credits not deducted in computing the contract balance
− allowable expenses
− amounts paid to discharge any security interest in the vehicle provided for by law

= Surplus. A negative (minus) amount produced by this calculation is referred to as a "deficiency"

M. "Pay" or "paid," in reference to payment of a surplus, means a commercially reasonable attempt to pay.

II. Repossession Accounting Procedures

It is further ordered that General Motors shall provide to all dealers within 60 days of service of this Modified Order, and to each new dealer within 30 days of entering into a Sales and Service Agreement, guidelines for determining the existence of surpluses and for accounting for surpluses and for any deficiencies sought.

A. These guidelines (the "repossession accounting guide") shall, by physical insertion or as a supplement, be made a part of the General Motors uniform accounting system referred to in the various dealer Sales and Service Agreements between General Motors and its dealers. These agreements provide that this system (currently called the "General Motors Dealers Standard Accounting System Manual") should be followed in dealership operations. The repossession accounting guidelines shall also be incorporated into any subsequent set or compendium of comparable instructions.

B. The repossession accounting guidelines shall include a standardized form ("dealer repossession accounting form") which dealers should use in determining for each vehicle the existence and amount of any surplus and of any deficiency sought, and in recording payment of each surplus, in accordance with the provisions of Paragraph C below.

C. The repossession accounting procedures shall provide that:

1. Each surplus should be determined and paid to the recourse financing customer within a reasonable period of time of disposition in accordance with a method conforming to Paragraphs I.H through I.L of this Order;

2. Expenses other than allowable expenses should not be deducted in calculating surpluses and deficiencies sought;

3. Dispositions should be commercially reasonable. The dealer should make the same efforts to obtain the best available price for a repossessed vehicle as would be made for a comparable used vehicle, except that a dealer is not required to offer a warranty without extra charge even though such warranties are provided on other used vehicles.

4. If any rebate owed to the resource financing customer's account has not been received at the time the dealer repossession accounting form is completed, such rebate should be applied for promptly;

5. If any rebate is received after completion of the dealer repossession accounting form, any surplus or deficiencies should be redetermined and any remaining surplus paid within a reasonable time of disposition or within a reasonable time of receiving the rebate, whichever is later;

6. The dealer repossession accounting form should be prepared by the dealer for each disposition of a repossessed vehicle and:

a. Should set forth the calculations of each surplus and of each deficiency sought;

b. Should identify the vehicle and the financing customer and should be signed by a person authorized to sign retail installment contracts on behalf of the dealership;

c. A copy of the form should be sent with the surplus payment to each recourse financing customer to whom a surplus is paid and should be sent to each recourse financing customer from whom a deficiency is sought; and

d. Should be retained by the dealer, together with all relevant underlying documentations, for at least two years from the date of disposition.

7. Dealers should not obtain waivers of surplus or redemption rights from recourse financing customers, except as allowable under applicable state law.

8. Failure to account for and pay surpluses to customers may expose the dealer to legal action.

III. Equity Dealerships Procedures

It is further ordered that:

A. General Motors shall require each General Motors employee who is a director of an equity dealership to:

1. Provide the "repossession accounting guide" described in Part II of this order to each such dealership; and

2. Vote for resolutions so each such dealership handles repossessions in accordance with applicable state law.

IV. GMAC Retail Plan Changes, Deficiency Representations, Post-Repossession Notices

It is further ordered that GMAC:

A. Shall, in connection with the extension and enforcement of retail credit obligations relating to the sale of vehicles by dealers, cease and desist from:

1. Purchasing a repossessed vehicle at or through any type of sale (title clearance) conducted by GMAC.

2. Misrepresenting, directly or indirectly, orally, in writing, or in any other manner, that the debtor may be liable to pay a deficiency where GMAC knows or should know that it is not entitled under state or federal law to collect a deficiency.

3. Collecting or attempting to collect a deficency from a defaulting customer, or from his or her successors or assigns, where GMAC knows or should know that (a) it is not entitled under state or federal law to collect such deficiency, or (b) such deficiency is greater than the amount determined in accordance with the definitions set forth in Part I of this Order. For purposes of this subparagraph, the definitions of "proceeds" and "allowable expenses" will apply to GMAC's own dispositions.

4. Obtaining waivers of redemption or surplus rights from financing customers, except as allowable under state law.

B. Shall incorporate, by addendum or otherwise, provisions to the following effect into its Retail Plan as it relates to recourse financing, and into any subsequent edition or successor document:

1. Dealers are to permit redemption by the customer whose vehicle has been repossessed, at any time until there is a binding agreement for disposition;

2. Dealers are to permit redemption in accordance with the post-repossession notice sent by GMAC to the customer;

3. Dealers are to determine whether a surplus exists on a recourse financing repossession according to the repossession accounting procedures described in Part II of this Order;

4. In determining surpluses and deficiencies, dealers are not to deduct expenses other than allowable expenses;

5. Dealers are to account for and pay each surplus within a reasonable period of time of disposition.

C. Shall develop revised retail installment contract forms which (except as modified as described in Paragraph D below) include a clear, concise statement in lay language that, in the event of repossession:

1. No expenses other than reasonable expenses incurred, as a direct result of repossessing, holding, preparing for disposition and dispositing of the vehicle may be deducted from the proceeds in determining a surplus or deficiency; and

2. Any surplus realized on the resale or other disposition of the vehicle is to be paid to the customer.

D. Shall distribute the revised retail installment contract forms to all dealers who use GMAC forms after the Commission issues a final rule or final adjudicated order not less restrictive than the Paragraph C statements of allowable expenses and the duty to any surpluses. If the final rule or final adjudicated order is less restrictive than the Paragraph C statements, GMAC shall complete the distribution after the Commission has modified Paragraph C to render it consistent with the final rule or final adjudicated order. GMAC shall direct its branch offices that after the distribution to a dealership of the revised GMAC retail installment contract forms, they are not to purchase from that dealership GMAC forms of retail installment contracts that are not on the revised forms.

E. Shall establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to GMAC financing customers as soon as practicable after repossession.

1. GMAC shall periodically examine its branches' files, in accordance with its usual monitoring procedures to determine whether the post-repossession notices have been and are being sent and shall institute appropriate actions to assure that the procedure for sending post-repossession notices is adhered to.

2. The post-repossession notice shall have a GMAC heading and shall specify in clear, lay language:

a. The name and address of the place at which the vehicle is being stored and the address and telephone number of the GMAC branch office to be contacted;

b. The date or interval of time within which the customer may redeem by reinstating the contract in states where the creditor is required to permit reinstatement of the contract;

c. The amount necessary to redeem by reinstating the contract at the time and notice is dated, if the customer is entitled to or will be permitted to redeem by reinstatement;

d. The net amount necessary to redeem by discharging the customer's obligation at the time the notice is dated, except where the customer is entitled to or will be permitted reinstatement until the vehicle is disposed of;

e. The date or interval of time prior to which the vehicle will not be disposed of;

f. That the vehicle can be redeemed at any time prior to a binding agreement for its disposition;

g. That additional expenses may be incurred and may increase the amount necessary to redeem the vehicle if redemption is delayed (as further described in the Initial Compliance Report);

h. That GMAC should be contacted for further information about getting the vehicle back;

i. That any surplus resulting from a sale or lease is to be paid to the customer within a reasonable time after disposition (the notice may also state that an agreement between the dealer and GMAC provides that the dealer is to pay any surplus);

j. That failure to account for and pay a surplus may give the customer a right to sue for the amount of the surplus and for any penalties provided by law

k. That the customer will be liable for a deficiency or that the deficiency cannot be collected (the notice is to include the applicable language only);

l. That the customer should call the insurance company or the dealer to make sure that any insurance or service contract has been cancelled and that the customer has a right to credit for any refunds.

F. Shall issue no new materials to dealers inconsistent with this Order.

G. In any action by the Commission seeking civil penalties for a violation of subparagraphs A.2–.4 and Paragraph E, GMAC may not be held liable if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. In applying this paragraph, judicial interpretations of section 130(c) of the Truth in Lending Act, 15 U.S.C. 1640(c) (1974), shall be used.

V. Effect of Inconsistent Rule or Order

It is further ordered that:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, financing companies or dealerships than a corresponding

provision or provisions of this Order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective date of the Rule, supersede and replace the corresponding provision(s) of this Order. The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. However, the General Motors respondents shall advise the Commission of their intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this Order 30 days in advance of reliance thereon.

B. In the event any of the proceedings presently bearing Docket Nos. 9072, 9073 or 9074 result in a final adjudicated or consent order prescribing standards less restrictive (including deferral to state law) than a corresponding provision or provisions of this Order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a General Motors respondent's request pursuant to § 3.72 of the Commission's Rule of Practice, reopen this proceeding and order modifications of this Order or other relief as necessary and appropriate to conform this Order to such less restrictive standards prescribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive.

VI. Standard Reporting and Recordkeeping

It is further ordered that:

A. The General Motors respondents shall maintain complete business records relative to the manner and form of their continuing compliance with this Order. These include, but are not limited to, copies of notices sent to financing customers pursuant to Part IV. The General Motors respondents shall retain all such records for at least three years and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

B. Promptly following service of this Order, General Motors shall distribute a copy of this Order to its car divisions, GMC Truck Division, and Motors Holding Division unless previously furnished, and GMAC shall distribute a copy of this Order to each of its regional managers, unless previously furnished.

C. Each of the General Motors respondents shall notify the Commission at least 30 days prior to any proposed corporate change which may negate any of the obligations of the General Motors respondents arising out of this Order. Such changes include dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the discontinuance of General Motors present program for investing in equity dealerships, and the creation or dissolution of subsidiaries or any other change which may have such effect. No notice need be provided in the event of General Motors terminating, reducing or acquiring any interest in an equity dealership.

By the Commission.
Issued: March 4, 1988.

Emily H. Rock,
Secretary.

[FR Doc. 88-6065 Filed 3-18-88; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2929]

Interco Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1978 consent order (43 FR 48991) with respondent and its subsidiaries by removing the ban on "preticketing", the listing of suggested retail prices on tags, with respect to the raincoats and outerwear sold by Londontown. The Commission also ordered the respondents to show cause why the provision should not be set aside in its entirety.

DATES: Consent Order issued September 26, 1978. Modified Order issued February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Interco Incorporated, Londontown Corporation, and Queen Casuals, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth at 43 FR 48991, remain unchanged.

List of Subjects in 16 CFR Part 13

Raincoats, Outerwear, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 49 Stat. 1526; (15 U.S.C. 45, 13); sec. 3, 38 Stat. 731; (15 U.S.C. 14))

Before Federal Trade Commission

[Docket No. C-2929]

In the matter of INTERCO Incorporated, a corporation; Londontown Corporation, a corporation; and Queen Casuals, Inc., a corporation.

Order Reopening and Modifying Order Issued September 26, 1978 and Order To Show Cause

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

October 26, 1987, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside A Portion Of Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. Londontown is a division and Queen Casuals is a wholly owned subsidiary of Interco. The Request asked the Commission to reopen the consent order issued on September 26, 1978 ("the order") and set aside a portion of paragraph 4 of Part I of the order. Respondents' Request was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. No comments were received.

Paragraph 4 of Part I of the order, the provision at issue here, prohibited respondents for a three year period ending October 10, 1981, from communicating in writing any resale price or sale period to any reseller or prospective reseller of its products. After October 10, 1981, respondents are permitted by the order to suggest resale prices on the pages of any list, book, advertising, promotional material or other document if they include the following statement on such material:

THE (RESALE PRICES OR SALE PERIODS) QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN (RESALE PRICE OR SALE PERIODS).

Paragraph 4 of Part I of the order also provides:

A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

It is this latter provision, which prohibits a practice known as "preticketing," that respondents request the Commission to set aside insofar as it is applicable to raincoats and outerwear sold by Londontown.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4; *Hospital Corporation of America*, Docket No. 9161, Letter to Peter J. Nickles, Esquire (November 27, 1987), at 3.

The Commission may also modify an order pursuant to section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Therefore, § 2.51 of the Commission's Rules, 16 CFR 2.51, invites respondents in petitions to reopen to show how the public interest warrants the requested modification. In the case of a request for modification based on this latter ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2. If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. *Id.* The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

Whether the request to reopen is based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. The language of section 5(b) plainly anticipates that the petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979). If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether the modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the finality of Commission orders. See *Federated Department Stores v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

After reviewing respondents' Request, the Commission has concluded that respondents have not made a satisfactory showing that changed circumstances require that the ban on preticketing in the order should be set aside. Respondents have submitted market share and concentration data for the years 1983-1986 that tend to indicate that Londontown does not have market power in the manufacture, distribution and sale of raincoats and outerwear. However, the complaint in this matter made no allegation as to market power or market shares, and there is no reason to believe that the order or the ban on preticketing was imposed because of considerations of market share or market power. Changed factual circumstances justify modification of an order only when the changed circumstances are significant and respondent shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Albertson's, Inc.*, Docket No. C-3064, (petition to reopen and set aside order granted on July 1, 1987) at 2-3; *Cooper Industries, Inc.*, Docket No. C-2970, Letter to Sean F. Boland, Esquire (September 16, 1987), at 1. *Hosptial Corporation of America*, Docket No. 9161, Letter to Peter J. Nickles, Esquire (November 27, 1987), at 3. The changed circumstances alleged by respondents clearly do not meet this standard and are irrelevant to the allegations of the complaint. Accordingly, these changes do not constitute changed circumstances that require modification of the order.

The Commission has concluded, however, that it is in the public interest to reopen and set aside the ban on preticketing in the order. Respondents have shown that the ban on preticketing prohibits them from marketing their products in a manner that is available to their competitors and that would otherwise be lawful. Accordingly, the ban on preticketing places the respondents at a competitive disadvantage with respect to their competitors who are not subject to similar provisions.

The affirmative need to modify the order to eliminate the competitive disadvantage outweighs any continuing need for the prohibition on preticketing. The ban on preticketing is in the nature of a "fencing-in" provision to prevent respondents from using otherwise lawful preticketing as a device to accomplish vertical price fixing. The Commission believes that the conduct that led to the entry of this order has been interrupted for a sufficient period of time so that the ban on preticketing is no longer necessary either to dissipate the effects of respondents' past conduct or to prevent its recurrence.

Respondents have requested that the ban on preticketing be removed only with respect to raincoats and outerwear sold by Londontown. However, the Commission believes that the provision should be deleted in its entirety inasmuch as it no longer appears to be serving a remedial purpose and is inhibiting lawful competitive behavior.

Accordingly, *It Is Ordered* that this matter be and it hereby is reopened and that the last sentence of paragraph 4 of Part I of the Commission's Decision and Order issued on September 26, 1978, shall be modified as of the effective date of this order to read as follows:

A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller except as to raincoats and outerwear sold by Londontown.

It Is Further Ordered that respondents show cause why the foregoing provision should not be set aside in its entirety. In accordance with § 3.72 of the Commission's Rules of Practice, 16 CFR 3.72, respondents have 30 days from the date of service of this order to file an answer hereto or be deemed to have accepted the action proposed herein

By the Commission, Commissioner Bailey dissenting.

February 23, 1988.

Emily H. Rock,

Secretary.

[FR Doc. 88-6064 Filed 3-18-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: Customs Service, Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, will be 10 percent for underpayments and 9 percent for overpayments for the quarter beginning April 1, 1988. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278 (317) 298–1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99–514), amended 26 U.S.C. 6621, mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

Determination

It has been determined that the rates of interest for the period of April 1, 1988—June 30, 1988 are 10 percent for underpayments and 9 percent for overpayments. These rates will remain in effect through June 30, 1988, and are subject to change on July 1, 1988. They will remain in effect until changed by another notice in the **Federal Register**.

Dated: March 11, 1988.

Wm. Rosenblatt,

Acting Commissioner of Customs.

[FR Doc. 88–6046 Filed 3–18–88; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 40, 41, and 42

[SD–108.865; 108.866]

VISAS; Regulations Pertaining to Both Nonimmigrants and Immigrants, Under the Immigration and Nationality Act, as Amended; Correction

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors, and makes editorial and technical amendments, to final rule 108.865 published in the **Federal Register** on November 5, 1987. It also corrects the effective date to final rule 108.866 published in the **Federal Register** of November 17, 1987.

FOR FURTHER INFORMATION CONTACT: Guida Evans-Magher at (202) 663–1206.

SUPPLEMENTARY INFORMATION: On November 5, 1987, the Department issued final rule 108.865, 52 FR 42590–42623, which completely reorganized Parts 41 and 42 to Title 22 of the Code of Federal Regulations. This rule makes necessary editorial and technical corrections to that publication. One of these corrections, for instance, reinstates citations contained in Title 22 CFR Parts 41 and 42, which were inadvertently omitted from final rule 108.865. Furthermore, on November 17, 1987 the Department published final rule SD 108.866 at 52 FR 43894–43897, which amended certain regulations in Parts 41 and 42 intended for incorporation into Title 22 prior to the reorganization of Parts 40, 41 and 42. For purposes of codification, however, in addition to the November 17, 1987 effective date, SD 108.866 should also have set forth the expiration date of the document. Thus for the final rule expiration would have preceded the November 29, 1987 reorganization date of Title 22 Parts 40, 41 and 42.

Accordingly, the following corrections are made: To SD 108.865, published November 5, 1987.

PART 40—[CORRECTED]

Make the following corrections to the sections listed below.

§ 40.7 [Corrected]

On page 42593, in § 40.7(a)(9)(i), reverse the order of the two sentences to begin with the second sentence "Before a finding * * *" followed by the first sentence "A determination that a crime * * *".

On page 42596, in § 40.7(a)(28)(v), line 6, remove "automatically".

On page 42596, in § 40.7(b)(1)(iv), line 2, remove "law or".

On page 42596, § 40.7(b)(1)(v) is revised to read: "(v) The necessary fee is not paid for the issuance of the visa, or, in the case of an immigrant visa, for the application therefor;".

On page 42596, § 40.7(b)(1)(vi) is revised to read: "(vi) In the case of an immigrant visa application, the alien fails to swear to, or affirm, the application before the consular officer; or".

On page 42596, in § 40.7(d), line 4, insert "," after "(E)" and on line 12 remove the "," after "immunities".

PART 41—[CORRECTED]

Make the following corrections to the sections listed below.

§ 41.2 [Corrected]

On page 42598, in § 41.2(i), line 26, change "Socialist" to "Democratic".

§ 41.12 [Corrected]

On pages 42599 and 42600, in § 41.12 revise the table to read:

Class	Section of law or treaty citation	Visa symbol
Ambassador, public, minister, career, diplomatic or consular officer, and members of immediate family.	101(a)(15)(A)(i); 66 Stat. 167	A–1.
Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii); 66 Stat. 167	A–2.

Class	Section of law or treaty citation	Visa symbol
Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immediate family.	101(a)(15)(A)(iii); 66 Stat. 167	A-3.
Temporary visitor for business	101(a)(15)(B); 66 Stat. 167	B-1.
Temporary visitor for pleasure	101(a)(15)(B); 66 Stat. 167	B-2.
Temporary visitor for business and pleasure	101(a)(15)(B); 66 Stat. 167	B-1 and B-2.
Alien in transit	101(a)(15)(C); 66 Stat. 167	C-1.
Alien in transit to United Nations Headquarters District under § 11. (3), (4), or (5) of the Headquarters Agreement with the United Nations.	101(a)(15)(C); 66 Stat. 167	C-2.
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit.	212(d)(8); 66 Stat. 188	C-3.
Crew member (ship or aircraft crew)	101(a)(15)(D); 66 Stat. 167	D.
Treaty trader, spouse and children	101(a)(15)(E)(i); 66 Stat. 168	E-1
Treaty investor, spouse and children	101(a)(15)(E)(ii); 66 Stat. 168	E-2.
Student (academic or language training program)	101(a)(15)(F)(i); 66 Stat. 168 75 Stat. 527	F-1
Spouse and children of alien classified F-1	101(a)(15)(F)(ii); 75 Stat. 527	F-2.
Principal resident representative of recognized foreign member government to international organization, representative's staff, and members of immediate family.	101(a)(15)(G)(i); 66 Stat. 168	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family.	101(a)(15)(G)(ii); 66 Stat. 168	G-2.
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family.	101(a)(15)(G)(iii); 66 Stat. 168	G-3.
International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv); 66 Stat. 168	G-4.
Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes and members of immediate family.	101(a)(15)(G)(v); 66 Stat. 168	G-5.
Temporary worker of distinguished merit and ability	101(a)(15)(H)(i); 66 Stat. 168	H-1.
Temporary worker performing agricultural services unavailable in the United States	101(a)(15)(H)(ii)(a); 100 Stat. 3411	H-2(A).
Temporary worker performing other services unavailable in the United States	101(a)(15)(H)(ii)(b); 66 Stat. 168; 100 Stat.	H-2(B).
Trainee	101(a)(15)(H)(iii); 66 Stat. 168; 84 Stat. 116	H-3.
Spouse and children of alien classified H-1, H-2, or H-3	101(a)(15)(H); 84 Stat. 168	H-4.
Representative of foreign information media, spouse and children	101(a)(15)(I); 66 Stat. 168	I.
Exchange visitor	101(a)(15)(J); 66 Stat. 167; 75 Stat. 527	J-1.
Spouse and children of alien classified J-1	101(a)(15)(J); 75 Stat. 527	J-2.
Fiance(e) of U.S. citizen	101(a)(15)(K); 84 Stat. 116	K-1.
Children of alien classified K-1	101(a)(15)(K); 84 Stat. 116	K-2.
Intracompany transferee (executive, managerial, and specialized personnel continuing employment with international firm or corporation).	101(a)(15)(L); 84 Stat. 116	L-1.
Spouse and children of alien classified L-1	101(a)(15)(L); 84 Stat. 116	L-2.
Student (vocational or other recognized nonacademic)	101(a)(15)(M)(i); 95 Stat. 1611	M-1.
Spouse and children of alien classified M-1	101(a)(15)(M)(ii); 95 Stat. 1611	M-2.
The parent of an alien child classified SK-3 under section 101(a)(27)(I)(i)	101(a)(15)(N); 100 Stat. 3359	N-8.
The child of parent classified N-8 or of alien classified SK-1; SK-2; SK-4 under section 101(a)(27)(I) (ii), (iii), or (iv).	101(a)(15)(N); 100 Stat. 3359	N-9.
Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098	NATO-1.
Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.	NATO-2.
Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family.	Art. 14, 5 UST 1096	NATO-3.
Officials of NATO (other than those classifiable under NATO-1) and members of immediate family.	Art. 18, 5 UST 1098	NATO-4.
Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO and their dependents.	Art. 21, 5 UST 1100	NATO-5.
Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty; and their dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877	NATO-6.
Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 classes, and members of immediate family.	Arts. 12-20, 5 UST 1094-1098	NATO-7.

§ 41.21 [Corrected]

On page 42600, at the end of § 41.21(d)(2) introductory text, remove "s;" from the word "nonimmigrants;" and add "visa applicants;"

On page 42600, § 41.21(d)(2)(ii) is revised to read "(ii) Class A-2:INA 212(a)(27) and (29);".

§ 41.26 [Corrected]

On page 42602, in § 41.26(c)(1)(xiv), change "(a) to (k)" to read "(c)(1)(i) to (c)(1)(xi)".

On page 42602, in § 41.26(c)(2)(xi), remove the hyphen in "Co-operation".

§ 41.27 [Corrected]

On page 42602, § 41.27(c)(1)(iii), remove "22 CFR" and insert "§" symbol.

On page 42602, § 41.27(c)(1)(xii), change "(a) through (k)" to read "(c)(1)(i) through (c)(1)(xi)".

On page 42602, § 41.27(c)(1)(xiii), change "(a) through (m)" to read "(c)(1)(i) through (c)(1)(xiii)".

§ 41.32 [Corrected]

On page 42604, § 41.32(f), line 10, remove the second "i" from the word "mutiliated".

§ 41.101 [Corrected]

On page 42608, in § 41.101(a), line 14, insert "officer" after the first "consular".

§ 41.102 [Corrected]

On page 42608, in § 41.102(a)(6), line 2, remove "officer" after "nonimmigrant".

§ 41.105 [Corrected]

On page 42609, in § 41.105(b), last line insert the missing fourth "i" in "eligibility".

§ 41.112 [Corrected]

On page 42610, in § 41.112(d)(2) introductory text, remove "(1)" and insert "(d)(1)".

On page 42610, in § 41.112(d)(2)(ii), remove "(a)" and insert "(d)(2)(i)".

PART 42—[CORRECTED]

Make the following corrections to the sections listed below.

§ 42.11 [Correction]

On page 42615, in § 42.11(b) under Class, Section of law, and Visa symbol columns remove the fifth entry.

On page 42615, in § 42.11(c), between the 14th and 15th entries insert the following entry:

Class	Section of law	Visa symbol
. . . . .		
"Fourth preference: Spouse of alien classified C4-1 (conditional status)"	203(8); 216(a), 100 Stat. 3537	C4-2.

On page 42615, in § 42.11(c), in the last "Fourth preference" entry remove the "." after "216(a)." and insert ", 100 Stat. 3537".

§ 42.31 [Corrected]

On page 42617, in § 42.31(a), line 19, remove "§" symbol and insert "22 CFR".

§ 42.52 [Corrected]

On page 42618, in § 42.52(b)(3)(iii), remove "§" symbol and insert "22 CFR".

§ 42.53 [Corrected]

On page 42618, in § 42.53(b)(2)(ii), remove "§ " symbol and insert "22 CFR".

§ 42.64 [Corrected]

On page 42619, in § 42.64(b), remove "22 CFR" and insert "§ " symbol.

§ 42.67 [Corrected]

On page 42620, in § 42.67(a)(2), line 14, remove the second "then".

§ 42.81 [Corrected]

On page 42622, in § 42.81(e), line 3, change "1" to "one".

§ 42.83 [Corrected]

On page 42623, in § 42.83 (a) and (b), lines 5 and 4, respectively, change "1" to "one".

In SD 108.866 published at 52 FR 43894 November 17, 1987, correct the effective date to read as follows:

DATES: Effective November 17, 1987; Expires November 28, 1987.

Date: March 15, 1988.

Cornelius D. Scully, III,

Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office.

Editorial Note: Additional corrections to this document are published in the Corrections Section of this issue of the **Federal Register.**

[FR Doc. 88-6042 Filed 3-18-88; 8:45 am]

BILLING CODE 4710-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3351-6]

Designations of Areas for Air Quality Planning Purposes; Attainment Status Designations; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: This rulemaking revises the Pierce Township, Clermont County designation for sulfur dioxide (SO_2) from nonattainment to attainment of the National Ambient Air Quality Standards.

USEPA's action is in response to the Ohio Environmental Protection Agency's request to redesignate this area to attainment. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

EFFECTIVE DATE: This final rulemaking becomes effective on April 20, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following address: U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of the redesignation request are also available at: Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0189.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the NAAQS attainment status for each area of every State. For Ohio, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

USEPA's criteria for data that warrant redesignating an area are set out in an April 21, 1983 memorandum, "Section 107 Designation Policy Summary" from Sheldon Meyers, Director, Office of Air Quality Planning and Standards. Accordingly, SO_2 redesignations must be supported by:

(a) Ambient monitoring data showing no violations over the most recent consecutive eight quarters (or four quarters if actual, commensurate, enforceable, concurrent emission reductions have also occurred).

(b) A USEPA reference modeled attainment demonstration at the SIP allowable emission limitations.

(c) Certification of compliance with the SIP limits based on the federally approved test methods.

(d) A redesignation cannot relax the SIP.

On December 14, 1982, OEPA requested USEPA to redesignate Clermont County (Pierce Township) from nonattainment to attainment for SO_2. This request was based on available ambient air quality data which have shown no violations since January 1980.

On July 17, 1984 (49 FR 28888), USEPA proposed action on the State's request. In the notice, USEPA proposed to disapprove the redesignation of Pierce Township, Clermont County, due to the lack of current compliance data for the Cincinnati Gas and Electric Company (CG&E), Beckjord Generating Station. In response to the notice of proposed rulemaking, CG&E submitted results of a recent stack test for its Beckjord plant and requested that Clermont County be designated attainment.

The Stack tests demonstrated compliance with the SIP emission limits for Units 1-4 (1.84 lbs/MMBTU) and Units 5-6 (7.18 lbs/MMBTU), and the coal burned during the test was representative of the Beckjord coal

supply. Consequently, these compliance data, together with the modeled attainment demonstration for the SIP limits, and the available monitored data over eight quarters showing no violations, supported redesignation to full attainment.

OEPA has reviewed the CG&E Beckjord Station for consistency with USEPA's Stack Height Rules (50 FR 27892). Because all stacks and units were in existence prior to December 31, 1970, Beckjord is not subject to the Stack Height Rules.

On December 8, 1986 (51 FR 44018), USEPA proposed rulemaking to revise the SO_2 designation for Pierce Township in Clermont County, Ohio from nonattainment to attainment of the NAAQS. A 30-day comment period was provided at the time of the proposed rulemaking. In response to a request from the Natural Resources Defense Council (NRDC), the public comment period was extended until May 15, 1987.

In response to the Notice of Proposed Rulemaking, public comments were submitted by: The Ohio Environmental Protection Agency (OEPA), Cincinnati Gas & Electric Company (CG&E), Natural Resources Defense Council (NRDC), and the Southwestern Ohio Air Pollution Control Agency (SWOAPCA).

In addition to these comments, USEPA, Region V has further considered the representativeness of the coal used by CG&E during the stack test to demonstrate compliance with the existing SO_2 emission limitations. Although this evaluation raised some questions about continuous compliance, USEPA maintains its previous determination that the stack test was performed under representative conditions.

Each of the comments raised during the public comment period and USEPA's responses are discussed below.

Comment: OEPA, SWOAPCA and CG&E claimed that the existing technical support materials satisfy the criteria in USEPA's redesignation policy and urged USEPA to finalize the redesignation to attainment.

USEPA Response: As noted in the summary provided below, USEPA agrees that the redesignation criteria have been met and, thus, final redesignation to attainment is appropriate.

Comment: NRDC stated that the Notice of Proposed Rulemaking failed to describe the modeled attainment demonstration in sufficient detail to permit any meaningful public comment. NRDC requested a copy of the modeling analysis and additional time to review and comment on the modeling.

After receiving the modeling, NRDC commented that the analysis may have been valid in 1976, but it does not meet USEPA's current modeling guidelines and is, thus, unacceptable.

USEPA Response: USEPA's December 14, 1984, technical support document for the proposed rulemaking explained that the modeled attainment demonstration for Clermont County was described in detail in another document (i.e., "Technical Support Document: Sulfur Dioxide Control for the State of Ohio", April 1976). On February 4, 1987, USEPA sent copies of the actual computer printout from the original Clermont County modeling analysis and the relevant pages of the April 1976 Technical Support Document to NRDC.

USEPA recognizes that the modeling analysis is over 10 years old and that certain elements of the modeling (e.g., years of meteorological data, receptor resolution) are incomplete relative to current modeling guidelines. USEPA does not, however, require States to revise previous attainment demonstrations when new modeling guidelines are developed, unless there is information available showing that the existing emission limits are inadequate to attain and maintain the NAAQS. The commenter has not provided any evidence that the emission limits resulting from that modeling do not ensure attainment of the SO_2 NAAQS. In the absence of such information, USEPA will continue to presume that the existing emission limits are adequate. Thus, USEPA believes that the age and completeness of the modeling does not affect this redesignation.

Comment: NRDC objected to the use of block average concentrations in the modeled attainment demonstration. NRDC believes that the 3-hour and 24-hour SO_2 NAAQS are not limited to block average periods and should instead be interpreted on a running average basis.

In counter-comments, CG&E argued that block averaging is consistent with "* * * applicable law and long-standing Agency policy, and is required by the Agency's current rules."

USEPA Response: On March 28, 1986, Gerald Emison, Director, Office of Air Quality Planning and Standards, USEPA issued a memo entitled "Block Averages in Implementing SO_2 NAAQS". Briefly, Mr. Emison stated that block averages will be used in actions implementing the 3-hour and 24-hour SO_2 NAAQS. The Clermont County redesignation is consistent with that policy.

Comment: NRDC cited recent daily average coal sampling and analysis (CSA) data as showing that the Beckjord Station, Units 1–4, were routinely violating the applicable SO_2 emission limitations. Since the promulgated compliance test method (i.e., a stack test) represents basically a 3-hour period, NRDC claimed that the daily CSA violations understate the degree of 3-hour noncompliance. Based on this information, NRDC stated that the Beckjord Station is not in compliance with its SO_2 emission limits and the nearby area is not in attainment of the SO_2 NAAQS.

In counter-comments, CG&E noted that the only approved compliance test method is a stack test in accordance with 40 CFR Part 60, Appendix A, Reference Method 6 under representative conditions; and CSA is not an approved method in the Ohio SIP for showing compliance or non-compliance. CG&E cited its 1984 stack test which showed compliance and was performed using coal that was determined in 1984 to be representative by USEPA. CG&E maintained that the coal burned in 1984 "* * * continues to be representative of the coal burned at the Beckjord Plant."

USEPA Response: According to the SO_2 SIP for Ohio, the only test method and procedure to determine compliance applicable to Beckjord is a stack test conducted under "* * * such conditions as the Administrator shall specify based on representative performance of the affected facility."

USEPA acknowledges the 1984 stack tests as showing compliance with the applicable emission limitations. Furthermore, although the 1986 CSA data raise some questions about continuous compliance, the data do justify the representativeness of the coal data burned during the stack test (i.e., 1986 CSA data are consistent with 1984 CSA data). Thus, USEPA believes that the stack test data and CSA data satisfy the SIP compliance requirements.

Conclusion: USEPA's redesignation policy contains five main criteria for SO_2 redesignations to attainment. USEPA believes that these criteria have been met, as noted below. Thus, redesignation of Clermont County to attainment is approvable.

1. Consistency With GEP Stack Height Regulations

As noted previously all stacks and units at Beckjord were in existence prior to December 31, 1970. Thus, Beckjord is not subject to the Stack Height Regulations.

2. Modeled Attainment Demonstration at SIP Emission Limits

The modeled attainment demonstration for Clermont County is discussed in "Technical Support Document: Sulfur Dioxide Control for the State of Ohio," April 1976. This modeling analysis showed attainment of the SO_2 NAAQS at the SIP emission limits. Since no data have been provided showing that the SIP emission limits do not protect the NAAQS, USEPA will continue to presume that these limits are adequate.

3. Evidence of Implementation of the SIP Emission Limits

In 1984, CG&E performed a stack test under representative conditions at the Beckjord Station. The stack test showed that the SIP emission limits were being met. Because the only approved compliance test method is a stack test, the 1984 stack test results are evidence of compliance.

4. Recent Monitored Attainment

No exceedances of the SO_2 NAAQS were measured at the two ambient monitors in Clermont County during the 1980–1986 period.

Note: Because these monitors are not sited to measure the maximum impacts from Beckjord, this redesignation is based primarily on the modeled attainment demonstration.

5. Redesignation Must Not Relax the SIP

The redesignation of Clermont County will not relax the SO_2 emission limitations for any source in the County.

USEPA is taking final action approving the redesignation of Pierce Township, Clermont County to attainment for the SO_2 NAAQS. SO_2 implementation plans for nonattainment areas are designed to satisfy the requirements of Part D of the Clean Air Act and provide for attainment and maintenance of the SO_2 NAAQS. Evidence of failure to maintain compliance with the applicable SO_2 standard may result in a requirement to conduct future stack tests until compliance is maintained.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Sulfur Dioxide, Wilderness areas.

Dated: March 12, 1988.

Lee M. Thomas,

Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.336 the Table for Ohio Sulfur Dioxide is amended by revising the entry for Clermont County to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO.—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *	*	*		
Clermont County				X
* * * * *	*	*		

[FR Doc. 88–6111 Filed 3–18–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Nurse Anesthetist Traineeships

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations set forth the requirements for grants, authorized by section 831(a) of the Public Health Service Act (the Act), to public or private nonprofit institutions to cover the costs of traineeships for the training of registered nurses to be nurse anesthetists. They also conform the regulations to an amendment made by Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted on January 14, 1986, and to departmental grants policy.

DATES: These regulations are effective on the date they appear in the **Federal Register**, except §§ 57.509(c), 57.510(a), and 57.512(b) which will be effective upon OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas P. Phillips, Chief, Advanced Nurse Education Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–13, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443–6333.

SUPPLEMENTARY INFORMATION: Section 831(a) of the Act authorizes the Secretary to make grants to public or private nonprofit institutions to cover the costs of traineeships for the training of registered nurses to be nurse anesthetists. On December 16, 1986, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the **Federal Register** (51 FR 45000), a Notice of Proposed Rulemaking (NPRM) to add a new Subpart F to Part 57 of Title 42 of the Code of Federal Regulations to implement section 831(a) of the Act. Section 831 was added to the Act by the Nurse Training Amendments of 1979 (Pub. L. 96–76). The Nurse Education Amendments of 1985 (Pub. L. 99–92), enacted August 16, 1985, extended the authority for traineeships through FY 1988 under section 831(a).

The public comment period on the proposed regulations closed on February 17, 1987. The Department received no

comments. The following is a summary of the major items, by their section numbers and headings, that are included in these final regulations.

Section 57.502 Definitions.

The term "nurse anesthetists training program" is defined as a full-time educational program which: (1) Is designed to qualify registered nurses as nurse anesthetists; and (2) is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools (CANAEPS); and (3) has students enrolled in the program who are beyond the twelfth month of study.

Section 831(a) of the Act requires that the nurse anesthetist program be accredited by an entity of entities designated by the Secretary of Education. CANAEPS is the accrediting entity for nurse anesthetist programs recognized by the Secretary of Education. Therefore, certification by CANAEPS is a requirement of the definition of "nurse anesthetist training program."

Section 57.504 How will applications be evaluated?

The NPRM included a special consideration for institutions that: (a) Show evidence of efforts to attract and retain minority students, (b) demonstrate that they award traineeships to students who have clear financial need, and (c) plan to sustain nurse anesthetist traineeship programs beyond the period during which Federal assistance is available. The Secretary has decided to omit this special consideration as part of a newly implemented policy to announce any special factors related to national needs that will be considered in funding applications in periodic notices in the **Federal Register**, and to retain in regulations only those special considerations that are in the statute. The policy was adopted by the Secretary to provide maximum flexibility for programs management, thus enabling the grant program to respond more quickly to new and emerging health care needs. The removal of the special consideration in this instance does not necessarily preclude the announcement of all or a part of the special consideration in a forthcoming **Federal Register** notice.

Section 57.506 How is the amount of the award determined?

Section 57.506 states that the Secretary will use a formula

$$G = F \times \frac{N}{E}$$

to determine the amount to be awarded to each approved nurse anesthetist training program. G represents the amount of grant to be awarded. F represents the amount of traineeship funds appropriated to implement section 831(a) in the fiscal year in which application is made. E represents the total number of full-time students enrolled beyond the twelfth month of study in all the approved applicant nurse anesthetist training programs. N represents the number of full-time students enrolled beyond the twelfth month of study in the applicant nurse anesthetist training program. Should special factors for determining the funding of applications be announced by the Secretary in the **Federal Register**, N will be adjusted upward when an applicant meets the specific criteria as announced. This adjustment will result in the award of additional traineeship funds to successful applicants who meet the criteria of the special factors.

The Department intends to fund every approved application. This formula is an equitable way of distributing grants. The formula permits each applicant to receive a proportional share of the available funds based on its enrollment of students who are beyond the twelfth month of study.

Section 57.507 For what purposes may grant funds be spent?

This provision has been clarified to indicate that grant funds may be spent only for traineeships.

Section 57.509 Who is eligible for financial assistance as a trainee?

Section 57.509(b) requires a registered nurse to be enrolled as a full-time student beyond the twelfth month of study in the nurse anesthetist training program to be eligible to receive a traineeship. In addition, § 57.509(c) requires that the registered nurse demonstrate financial need, as determined by the institution.

Additionally, the final regulations make further revisions to the proposed regulations. Since these revisions are technical and ministerial, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. These revisions are summarized below according to the section numbers and their headings:

1. Revise § 57.502, entitled "*Definitions.*", to revise the term "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia." in accordance with Pub. L. 99–239;

2. Revise § 57.503, entitled "*Who is eligible to apply for a grant?*", to add a footnote which provides the address for obtaining application forms and instructions.

3. Revise § 57.505, entitled "*How long does grant support last?*" to:

(a) Reflect current departmental grants policy in paragraph (c) by adding a sentence regarding continuation support; and

(b) Remove paragraph (d), concerning federally obligated grant funds, and relocate it in § 57.507, entitled "*For what purposes may grant funds be spent?*";

4. Revise § 57.507, entitled "*For what purposes may grant funds be spent?*" by:

(a) Reformatting the section text;

(b) Adding a paragraph (b) to state that grants funds may not be spent for sectarian instruction or for any religious purpose in accordance with departmental grants policy; and

(c) Adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds in accordance with departmental grants policy;

5. Revise § 57.509(a), entitled "*Who is eligible for financial assistance as a trainee?*", to incorporate the eligibility requirement of a trainee's United States Citizenship status provided by the Immigration and Naturalization Service policy as it relates to the admission, into the United States, its territories and possessions, of citizens of the Republic of the Marshall Islands and the Federated States of Micronesia (formerly entities of the Trust Territory of the Pacific Islands), in accordance with Pub. L. 99–239; and

6. Revise § 57.513, entitled "*What additional Department regulations apply to grantees?*", to include "45 CFR Part 75—Informal grant appeals procedures" in accordance with departmental grants policy.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined this rule is not a major rule under

Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Sections 57.509(c), 57.510(a), and 57.512(b) contain information collection activities which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted an information request to OMB for approval of these requirements. These requirements will not be effective until the Department obtains OMB approval, at which time a notice will be published in the **Federal Register** to notify the public of such action.

List of Subjects in 42 CFR Part 57

Grant programs—nursing, Health manpower shortage area, Health professions, Medical and dental schools, Nursing advanced training, Nurse practitioner, Nurse practitioner traineeship program, Student aid.

Accordingly, Subpart F is added to Part 57 of Title 42 of the Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistance, No. 13.124, Grants for Nurse Anesthetist Traineeships)

Dated: January 27, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: March 1, 1988.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart F, consisting of §§ 57.501 through 57.514, entitled, "Grants for Nurse Anesthetist Traineeships" to read as follows:

Subpart F—Grants for Nurse Anesthetist Traineeships

Sec.

Subpart F—Grants for Nurse Anesthetist Traineeships

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 831 of the Public Health Service Act, 93 Stat. 580, and 96 Stat. 2061; redesignated as sec. 831(a) as amended by 99 Stat. 396–397 (42 U.S.C. 297–1).

§ 57.501 To what programs do these regulations apply?

These regulations apply to grants awarded to public or private nonprofit institutions for the purpose of providing traineeships to registered nurses enrolled in nurse anesthetist training programs.

§ 57.502 Definitions.

"Act" means the Public Health Service Act, as amended.

"Fiscal Year" means the Federal fiscal year, beginning October 1 and ending the following September 30.

"National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States (as defined in 8 U.S.C. 1101(a)(22), the Immigration and Nationality Act).

"Nonprofit" as applied to any school, agency, organization, or institution means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Nurse anesthetist" means a registered nurse who has successfully completed a nurse anesthetist training program.

"Nurse anesthetist training program" means a full-time educational program which:

(1) Is designed to qualify registered nurses as nurse anesthetists;

(2) Is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools; and

(3) Has students enrolled in the program who are beyond the twelfth month of study.

"Registered nurse" means a person who has graduated from a school of nursing and is licensed to practice as a registered/professional nurse in a State.

"School of nursing" means a collegiate, associate degree, or diploma school of nursing as defined in section 853 of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services (HHS), to whom the authority involved has been delegated.

"State" includes, in addition to the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Trainee" means a student who is receiving a traineeship from a grant under this subpart.

§ 57.503 Who is eligible to apply for a grant?

Any public or private nonprofit institution which is located in a State and administers a nurse anesthetist training program is eligible to apply for a grant by submitting an application at the time and in the form that the Secretary may prescribe.[1]

§ 57.504 How will applications be evaluated?

Within the limits of funds available, the Secretary will award a grant to each eligible institution whose application is found to meet the requirements of section 831(a) of the Act and these regulations. In determining the funding of applications, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register.**

§ 57.505 How long does grant support last?

(a) The Notice of Grant Award specifies the period during which grant funds are available for obligation by the grantee. This period, called the budget period, will not exceed 1 year.

(b) The grant will initially be funded for 1 year, and subsequent awards will also be for 1 year at a time. A grantee must submit a separate application to have support continued for each

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

subsequent year. Decisions about the amount of all awards will be made by formula as described in § 57.506 of these regulations. In all cases awards require a determination by the Secretary that funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.506 How is the amount of the award determined?

(a) The Secretary will use the following formula to determine the amount of the grant to be awarded to each approved nurse anesthetist training program:

$$G = F \times \frac{N}{E}$$

G represents the amount of grant to be awarded. F represents the amount of traineeship funds appropriated to implement section 831(a) in the fiscal year in which application is made. E represents the total number of full-time students enrolled beyond the twelfth month of study in all the approved applicant nurse anesthetist training programs. N represents the number of full-time students enrolled beyond the twelfth month of study in the applicant nurse anesthetist training program. Should special factors for determining the funding of applications be announced from time to time in the Federal Register, N will be adjusted upward for those applicants meeting the specific criteria as announced. (This adjustment will result in the award of additional traineeship funds to successful applicants who meet the criteria of the special factors.)

(b) Students will be counted as of October 15 of the Federal fiscal year in which application is made.

§ 57.507 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart for traineeships according to § 57.508, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) A grantee may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of the budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and made available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's need for that period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.508 What financial support is available to trainees?

Expenditures from traineeship funds are limited to:

(a) Tuition and fees, in accordance with the established rates of the institution, except as limited by the Secretary.

(b) Stipends in whatever amount the grantee determines that each trainee needs to pursue the training program, as long as that amount does not exceed the limits established by the Secretary. Stipends may only be paid to the trainee in monthly installments.

(c) Transportation allowance on an individual basis when prior approval has been obtained from the Secretary in the following circumstance:

The grantee may pay a trainee an allowance from grant funds for travel to field training if the site is beyond a reasonable commuting distance and requires the trainee to establish a temporary new residence. However, the grantee may not pay an allowance for daily commuting from the new place of residence to the field training headquarters.

§ 57.509 Who is eligible for financial assistance as a trainee?

To be eligible for a traineeship, a registered nurse must:

(a) Be a resident of the United States and either a U.S. Citizen, a U.S. National, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands (CNMI), a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands (RMI) or the Federated States of Micronesia (FSM) (both formerly part of the TTPI);

(b) Be enrolled as a full-time student beyond the twelfth month of study in a nurse anesthetist training program;

(c) Demonstrate financial need, as determined by the institution; and

(d) Not be receiving concurrent support for the same training from another Federal education award which provides a stipend or otherwise duplicates financial provisions except education benefits under the Veteran's Readjustment Benefits Act and loans from Federal sources.

§ 57.510 What are the requirements for traineeships and the appointment of trainees?

(a)(1) The grantee must complete a statement which documents the appointment of each trainee. To complete this statement the grantee must require each trainee to provide information and documentation of his or her eligibility.

(2) The statement of appointment must be completed by the beginning of the training period or as soon thereafter as possible if the trainee receives notice of his or her traineeship appointment after the training period has begun. The statement of appointment must include information to document the eligibility of the trainee and certify that there will be compliance with all applicable Public Health Service terms and conditions governing the appointment. The program director must sign the statement on behalf of the grantee, and the trainee must sign it thus certifying the statements are true and complete. The original copy of the statement must be retained by the grantee to be available for program review and financial audit. A copy shall be provided to the trainee for his or her records.

(b) The grantee may not require trainees to perform any work which is not an integral part of the nurse anesthetist training program and required for all students in the program, or to perform services which detract from or prolong their training.

§ 57.511 Duration of traineeships.

The initial appointment to a traineeship must be made for a full academic year, not to exceed 12 months, except that a shorter appointment may be made when necessary to enable the trainee to complete the training program. A second appointment may not exceed 6 months. The total period of support for any trainee may not exceed 18 months.

§ 57.512 Termination of traineeships.

(a) The grantee must terminate a traineeship:

(1) Upon request of the trainee;

(2) If the trainee withdraws from the grantee institution; or

(3) If the grantee determines that:

(i) The trainee is no longer an enrolled student; or

(ii) The trainee is not eligible or able to continue in accordance with its standards and practices.

(b) The grantee must deposit any Federal portion of the tuition refund owed to a trainee into the grant account and provide written notice to the trainee that it is doing so.

§ 57.513 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title

45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.514 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of any award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 88-6067 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-15-M

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Department of Defense Federal Acquisition Regulation Supplement; Restriction on Procurement From Toshiba Corp. and Kongsberg Vapenfabrikk

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment.

SUMMARY: The Department of Defense is modifying Subpart 225.70 of the FAR Supplement to comply with section 8124 of DoD FY 88 Appropriations Act, Pub. L. 100-202. Section 8124 of the Act prohibits acquisitions of goods and services of Toshiba Corporation and Kongsberg Vapenfabrikk and their subsidiaries. The interim rule differs from an earlier proposed rule, 53 FR 4044, as follows:

(a) The terms "component" is defined.

(b) Section 225.7011-5, Waiver, has been revised to add "unique supplies" as one circumstance when a waiver of the statutory restriction is good for all such purchases during the year.

(c) The clause prescription has been revised to clarify that the clause shall be inserted in all solicitations and contracts *including small purchases.*

(d) The coverage has been revised to clarify that the statutory prohibition on awards applies to all contracts including options exercised thereunder.

DATES: *Effective Date:* March 21, 1988 (effective for all solicitations issued on or after March 21, 1988 and for all contracts, including options, awarded (regardless of the solicitation date) on or after March 21, 1988). Comments on this interim rule should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before April 20, 1988. Please cite DAR Case 87-322 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Charles W. Lloyd, Executive Secretary, DAR Council, OASD (P&L), DASD(P)/DARS, c/o Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Sullivan in the Office of International Acquisition, DASD(P) (IA), (202) 697-9351.

SUPPLEMENTARY INFORMATION:

A. Background

On February 11, 1988, (53 FR 4044) the Department of Defense published a proposed rule announcing its intention to modify Subpart 225.70 of the DoD FAR Supplement to comply with section 8124 of the DoD FY 88 Appropriations Act, Pub. L. 100-202 which prohibits acquisitions of goods or services of Toshiba Corporation and Kongsberg Vapenfabrikk and their respective subsidiaries. Public comments received in response to the proposed rule were considered in the development of this interim rule.

B. Regulatory Flexibility Act Information

This interim rule may have an effect on small entities performing under DoD contracts. However, information currently available is insufficient to permit determination as to extent of such impact. A determination in this regard will be made at a later date. Comments are hereby solicited. Comments from small entities concerning these changes will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88-610D in all correspondence.

C. Paperwork Reduction Act Information

This interim rule does not contain new information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 225 and 252 as follows:

PARTS 225 and 252—[AMENDED]

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 225.7011 is added to read as follows:

225.7011 Restriction on procurement from Toshiba Corporation or from Kongsberg Vapenfabrikk.

(a) "Component", as used in this subpart, means those articles, materials, or supplies incorporated directly into an item to be delivered under the contract.

(b) Section 8124 of the Department of Defense Appropriations Act, 1988 (Pub. L. 100-202) provides in part that none of the funds available to the Department of Defense are available for obligation or expenditure to procure either directly or indirectly any goods or services from

Toshiba Corporation or any of its subsidiaries or from Kongsberg Vapenfabrikk or any of its subsidiaries.

(1) For as long as this restriction or any similar restriction in a subsequent act is in effect, no contracts shall be awarded to nor options exercised with Toshiba Corporation or any of its subsidiaries or of Kongsberg Vapenfabrikk or any of its subsidiaries unless a waiver has been granted as described below. No contracts shall be awarded to nor options exercised with other firms for goods or services of Toshiba Corporation or any of its subsidiaries or of Kongsberg Vapenfabrikk or any of its subsidiaries unless a waiver has been granted as described below. In order to ensure that contracting activities of the Department of Defense do not procure indirectly goods or services of Toshiba Corporation, Kongsberg Vapenfabrikk or their respective subsidiaries, solicitations shall require offerors to identify the goods or services of Toshiba Corporation or Kongsberg Vapenfabrikk or their respective subsidiaries that the offeror would deliver under the contract.

(2) An item of personal property specified as an item to be delivered under the contract shall be considered to be goods of Toshiba Corporation or of Kongsberg Vapenfabrikk, or their respective subsidiaries, if such item contains components produced or manufactured by Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries and such components produced or manufactured by Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; *Provided That*, notwithstanding such transformation or merger, the item shall be considered to be goods of Toshiba Corporation, or of Kongsberg Vapenfabrikk, or of their respective subsidiaries if the cost of the components produced or manufactured by Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries exceeds 50 percent of the cost of all its components.

(3) Services shall be considered services of Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries if they are performed by an employee of Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries.

(c) Waiver. (1) Section 8124 permits the Secretary of Defense, on a case-by-case basis, to waive the prohibition imposed by section 8124 if the Secretary determines, in writing, that compliance with the prohibition would be detrimental to national security interests of the United States. Any such determination must be sent to the Committees on Appropriations of the Senate and the House of Representatives. The Secretary of Defense has delegated this authority to the Secretaries of the Military Departments, with the authority to redelegate to a level not below the level of Assistant Secretary and to the Deputy Assistant Secretary of Defense (Procurement) for procurements by defense agencies.

(2) Case-by-case determinations with respect to replacement parts, unique supplies, or maintenance services for equipment owned or leased by the Department may cover all similar replacement parts, unique supplies, or maintenance services estimated to be purchased during the year for the equipment.

(d) Provision and clause. The solicitation provision set forth in section 252.225–7023 shall be included in all solicitations. The contract clause set forth in 252.225–7024 shall be included in all contracts (including small purchases).

3. Sections 252.225–7023 and 252.225–7024 are added to read as follows:

252.225–7023 Restriction on Contracting with Toshiba Corporation and Kongsberg Vapenfabrikk.

As prescribed in DFARS 225.7011(d) insert the following provision:

Notice of Restriction on Contracting With Toshiba Corporation or Kongsberg Vapenfabrikk—Offerors Representation (March 1988)

(a) Offerors are advised that the Department of Defense may not procure either directly or indirectly any goods or services from Toshiba Corporation or any of its subsidiaries or Kongsberg Vapenfabrikk or any of its subsidiaries. Offers from Toshiba Corporation or any of its subsidiaries or from Kongsberg Vapenfabrikk or any of its subsidiaries shall be rejected unless a determination is made in accordance with law permitting such a procurement. Offers from offerors, other than Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries, of goods or services of Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries shall be rejected unless a determination is made in accordance with law permitting such a procurement.

(b) Definitions for purposes of this clause.

(1) Component, means those articles, materials, or supplies incorporated directly into an item to be delivered under the contract.

(2) Goods of Toshiba Corporation or any of its subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Toshiba Corporation or any of its subsidiaries and such components produced or manufactured by Toshiba Corporation or any of its subsidiaries have not been substantially transformed into a new and different acticle or have not been merged into a new and different article; provided that, notwithstanding such transformation or merger, the item shall be considered to be goods of Toshiba Corporation or any of its subsidiaries if the cost of the components produced or manufactured by Toshiba Corporation or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(3) Goods of Kongsberg Vapenfabrikk or any of its subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries and such components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; provided that, notwithstanding such transformation or merger, the item shall be considered to be goods of Kongsberg Vapenfabrikk or any of its subsidiaries if the cost of the components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(4) Services of Toshiba Corporation are any services specified in the schedule of this contract as an item to be delivered that is performed by any employee of the Toshiba Corporation or any of its subsidiaries.

(5) Services of Kongsberg Vapenfabrikk are any service specified in the schedule of this contract as an item to be delivered that is performed by any employee of the Kongsberg Vapenfabrikk or any of its subsidiaries.

(c) The offeror hereby represents that if awarded the contract it will not provide any goods and services of Toshiba Corporation, Kongsberg Vapenfabrikk, or any of their respective subsidiaries other than those listed below:

(list)

(End of provision)

252.225–7024 Restriction on Contracting with Toshiba Corporation and Kongsberg Vapenfabrikk.

As prescribed in DFARS 225.7011(d) insert the following clause.

Restriction on Contracting With Toshiba Corporation or Kongsberg Vapenfabrikk (March 1988)

(a) The contractor agrees that, unless a determination is made in accordance with law permitting such delivery, no goods or services delivered to the Government under this contract will be goods or services of either

(1) Toshiba Corporation or any of its subsidiaries or

(2) Kongsberg Vapenfabrikk or any of its subsidiaries.

(b) Definitions for purposes of this clause:

(1) Component, means those articles, materials, or supplies incorporated directly into an item to be delivered under the contract.

(2) Goods of Toshiba Corporation or any of its subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Toshiba Corporation or any of its subsidiaries and such components, produced or manufactured by Toshiba Corporation or any of its subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; provided that, notwithstanding such transformation or merger, the item shall be considered to be goods of Toshiba Corporation or any of its subsidiaries if the cost of the components produced or manufactured by Toshiba Corporation or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(3) Goods of Kongsberg Vapenfabrikk or any of subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries and such components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; *Provided That*, notwithstanding such transformation or merger, the item shall be considered to be goods of Kongsberg Vapenfabrikk or any of its subsidiaries if the cost of the components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(4) Services of Toshiba Corporation are any services specified in the schedule of this contract as an item to be delivered that is performed by any employee of the Toshiba Corporation or any of its subsidiaries.

(5) Services of Kongsberg Vapenfabrikk are any services specified in the schedule of this contract as an item to be delivered that is performed by any employee of Kongsberg Vapenfabrikk or any of its subsidiaries.

(End of clauses)

[FR Doc. 88-6177 Filed 3-18-88; 8:45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 339

Medical Qualification Determinations

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management proposes to amend its regulations governing medical qualification determinations to allow agencies greater flexibility to set appropriate medical standards and requirements without OPM approval, to develop necessary medical information about a medical condition which may affect safe and efficient performance, and to ensure treatment of applicants and employees consistent with Federal law and policy requiring nondiscrimination and affirmative action in Federal employment of individuals with handicaps.

DATE: Comments must be submitted on or before May 20, 1988.

ADDRESS: Send or deliver comments to Chief, Staffing Policy Division, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 632-6817.

SUPPLEMENTARY INFORMATION: In January 1984, OPM published final regulations (49 FR 1321) on the use of medical information in making personnel decisions (5 CFR Parts 339, 432, 752, and 831). These regulations represented a major change in how medical factors were developed and used in making employment decisions. In particular, the new Part 339 regulations—

—Circumscribed an agency's authority to require medical examinations in general,

—Specifically restricted the circumstances under which agencies could require psychiatric examinations (or psychological assessments),

—Shifted responsibility for raising and documenting a medical condition from the agency to the employee, and

—Defined the items constituting medical documentation in a way that would provide the most useful information for agency decisionmaking.

These new regulations have generally worked well, but experience in applying them has revealed the need for some changes and additional guidance. Thus, the proposed new regulations and corresponding FPM instructions contain the following key provisions.

1. Delegate to agencies the authority to establish medical standards for occupation that predominate in one agency (i.e., a single agency standard), and appropriate physical requirements for individual positions in accordance with OPM-prescribed criteria.

2. Clarify and expand the existing authority for agencies to establish medical evaluation programs when such programs are necessary to safeguard employee health or to ensure continued ability to perform safely and efficiently without undue hazard to the individual or to others.

3. Clarify and agency's authority to require medical examinations for employees who occupy positions which are subject to medical standards, medical evaluation programs, or physical requirements.

4. Allow agencies specific authority to examine employees injured on the job, but only for the purpose of determining the employees' qualifications for reemployment, not for entitlement to compensation.

5. Clarify that routine pre-appointment examinations are not allowed for positions that are not subject to specific medical standards, physical requirements, or a medical evaluation program—i.e., where health status is not an important component of a position, there is no authority to require a medical examination.

6. Allow agencies specific authority to require acceptable medical documentation from employees whenever there is evidence of a health problem which may affect safe and efficient performance.

7. Establish that agencies have the right to designate the examining physician when they order or offer an examination.

8. Allow psychiatric exams (or psychological assessments) when specifically required by medical standards or a medical evaluation program, or when a general medical examination otherwise authorized under these regulations rules out a physical cause to explain actions or behavior causing performance or conduct problems on the job. The examinations may be performed by a licensed practictioner authorized to conduct such exams, in accordance with accepted professional standards.

9. Clarify that the agency pays for all examinations which it orders or offers. The employee pays for all other examinations.

10. Restrict the basis on which agencies can disqualify candidates because of medical history.

11. Provide a regulatory basis for the existing agency authority to disqualify nonpreference eligibles for medical reasons, and for OPM review of the medical disqualification of 30 percent or more compensably disabled veterans by the U.S. Postal Service.

12. Clarify that the 1978 amendments to the Rehabilitation Act apply to wage grade employees as well as others, which means that agencies may only establish medical requirements and inquire into a person's health status to ensure that the individual is fit to perform the duties of the job safely and efficiently.

13. Provide that all actions under this regulation must comply with EEOC regulations governing the employment of individuals with handicaps under section 501 of the Rehabilitation Act.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 339

Government employees, Health.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to revise Part 339 of Title 5, Code of Federal Regulations, to read as follows:

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

Subpart A—General

Sec.

Subpart B—Physical and Medical Qualifications

Subpart C—Medical Examinations

Authority: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

Subpart A—General

§ 339.101 Coverage.

This part applies to all competitive service employees, and to excepted service employees when medical issues arise in connection with an OPM regulation which governs a particular personnel decision, for example, separation of an excepted service veteran under Part 752.

§ 339.102 Purpose and effect.

(a) This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title and corresponding Federal Personnel Manual instructions.

(c) Failure to meet a properly established medical standard for physical requirement under this part means that the individual is not qualified for the position. An employee's refusal to be examined in accordance with a proper agency order authorized under this part is grounds for appropriate disciplinary action.

§ 339.103 Compliance with EEOC regulations.

Actions under this part must be consistent with 29 CFR 1613.701 *et seq.* Particularly relevant to medical qualification determinations are § 613.704 (requiring reasonable accommodation of individuals with handicaps); § 1613.705 (prohibiting use of employment criteria that screen out individuals with handicaps unless shown to be related to the job in question) and § 1614.706 (prohibiting pre-employment inquiries related to handicap and pre-employment medical examinations, except under specified circumstances). In addition, use of the term "qualified" in these regulations shall be interpreted consistently with § 1613.702(f), which provides that a "qualified handicapped individual" is a person "who, with or without reasonable accommodation, can perform the essential functions of the position * * * without endangering the health or safety of the individual or others."

§ 339.104 Definitions.

For purposes of this part—

"Accommodation" means "reasonable accommodation" as described in 29 CFR 1613.704.

"Medical condition" means health impairment which results from injury or disease, including psychiatric disease.

"Medical documentation" or "documentation of a medical condition" means a statement from a licensed physican or other appropriate practitioner which provides information the agency considers necessary to enable it to make an employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted medical principles and practices. The determination that the diagnosis meets this criteria is made by or in coordination with the agency's physician. Such a statement would include the following information, or parts identified by the agency as necessary and relevant:

(a) The history of the medical condition, including references to findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: Findings of physicial examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation (or psychological assessment), the findings of a mental status examination and the results of psychological tests, if appropriate;

(c) Diagnosis, including the current clincial status;

(d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;

(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restructions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic or risk avoiding value;

(f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer harm by carrying out, with or without accommodation, the task or duties of a specific position;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. (In this context, "static or well-stablilized medical condition" means a medical condition which is not likely to change:

(1) As a consequence of the natural progression of the condition;

(2) Specifically as a result of the normal aging process; or

(3) In response to the work environment or the work itself. "Subtle incapacitation" means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. "Sudden incapacitation" means abrupt onset of loss of control of capabilities.)

"Medical evaluation program" means a program of recurring medical examinations or tests established by written agency policy or directive, to determine the health of certain employees for job-related reasons.

"Medical standard" is a written description of the medical requirements for a *particular occupation* on the basis that a certain level of fitness or health status is required for successful performance.

"Physical requirement" is a written description of the physical demands which are considered essential for successful performance in a *specific position.*

"Physician" means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

"Practitioner" means a person providing health services who is not a medical doctor, but who is licensed by a national organization or a State to provide the service in question.

Subpart B—Physical and Medical Qualifications

§ 339.201 Disqualification by OPM.

Subject to Subpart C of Part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instuct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed. An OPM decision under this section is separate and distinct from a determination of disability under § 831.502, § 844.103, § 844.202, or Subpart L of Part 831 of this title, and does not necessarily entitle the employee to disability retirement under sections 8337 or 8451 of title 5, United States Code.

§ 339.202 Medical standards.

OPM may establish or approve medical standards for a Governmentwide occupation (i.e., common to more than one agency). An agency may establish medical standards for positions that predominate in one agency (i.e., where an agency has 50 percent or more of the positions in a particular occupation). Such standards must be justified on the basis that the duties of the position are arduous or hazardous, or require a specific level of fitness because of a high degree of responsibility toward the public. The rationale for establishing the standard must be documented. Standards established by an agency must be:

(a) Established by agency directive and uniformly applied,

(b) Reasonably related to the actual requirements of the position, and

(c) Consistent with OPM instructions published in FPM chapter 339.

§ 339.203 Physicial requirements.

Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are considered essential for successful job performance. The requirements must be clearly supported by the actual duties of the position, documented in the position description, and approved by agency headquarters.

§ 339.204 Waiver of standards and requirements.

Agencies must waive a medical standard or physical requirement established under this part where there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the job without endangering the health or safety of the individual or others.

§ 339.205 Medical evaluation programs.

Agencies may establish periodic examination programs by written policies or directives to safeguard the health of employees: (a) Whose work places them or others at substantial risk; (b) whose jobs involve environmental hazards such as exposure to toxic substances; or (c) who occupy centain sensitive positions involving national security in which the duties are such that it is essential for incumbents to be free of medical impairments that could impede successful performance or pose an unacceptable risk. The specific positions covered must be identified and the applicants or incumbents notified in writing of the reasons for including the positions in the program.

Subpart C—Medical Examinations

§ 339.301 Authority to require an examination.

(a) Subject to § 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.

(b) An agency may require an employee who sustains a compensable on-the-jog injury to report for an examination to determine medical limitations that may affect placement decisions.

(c) An agency may require an employee who is released from his/her competitive level in a reduction in force to undergo a relevant medical evaluation if the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee's current position.

(d) An agency may order a psychiatric examination (including a psychological assessment) only when:

(1) The result of a current general medical examination otherwise authorized under this part indicates no physical explanation for behavior or actions causing performance or conduct problems on the job, or

(2) A psychiatric examination is specifically called for as part of the procedures set by medical standards or a medical evaluation program established under this part.

A psychiatric examination (or psychological assessment) must be conducted in accordance with accepted professional standards, by a licensed practitioner authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's metal fitness to successfully perform the duties of his or her position.

(e) A routine preappointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.

§ 339.302 Authority to require medical documentation.

(a) If at any time there is evidence of a health problem which is likely to affect safe and efficient performance or pose a significant risk to the individual or others, the agency may require an employee to supply specific medical documentation, as described in § 339.104 of this part, to establish that he or she is able to perform the duties of the position safely and efficiently.

(b) A candidate may not be disqualified solely on the basis of a medical history unless the condition at issue is itself disqualifying and there is evidence it is likely to recur, or the particular history of the condition poses an unacceptable risk.

§ 339.303 Authority to offer examinations.

An agency may, at its option, offer a medical examination (including a psychiatric evaluation) in any situation where the agency needs additional medical information to make an informed management decision. This may include situations where an individual requested for medical reasons a change in duty status, assignment,

working conditions, or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem which may require agency action. Reasons for offering and examination must be documented. An offer of a preemployment examination shall be carried out and used in accordance with 29 CFR 1613.706.

§ 339.304 Examination procedures.

(a) When an agency orders or offers a medical examination under this subpart, it must inform the applicant or employee in writing of its reasons for doing so and the consequences of failure to cooperate. (A single notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this subpart.)

(b) The agency designates the examining physician, but must offer the individual an opportunity to submit medical documentation from his or her personal physician. The agency must review and consider all such documentation supplied by the individual's personal physician.

§ 339.305 Payment for examination.

Agencies must pay for all examinations ordered or offered under this subpart. Applicants and employees must pay for a medical examination conducted by a private physician selected by the applicant or employee.

§ 339.306 Records and reports.

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM, under provisions of 5 CFR Part 293, Subpart E.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of Part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency must also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart. When the individual has applied for disability retirement, this information must be forwarded to OPM.

§ 339.307 Processing medical eligibility determinations or certificates of eligibles.

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible on a certificate in place of a nonpreference eligible,

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible, or

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force.

[FR Doc. 88-6073 Filed 3-18-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 87-AWP-32]

Proposed Establishment of Restricted Area R-2309; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R-2309 located near Yuma, AZ. This action would provide for the deployment of a tethered aerostat-borne radar system at the request of the U.S. Customs Service. This action would provide the U.S. Customs Service with the capability to provide surveillance of a volume of airspace from ground level to an altitude of approximately 15,000 feet mean sea level (MSL) and detect low altitude suspect aircraft attempting to penetrate the airspace. In order to establish R-2309, it would be necessary to amend slightly the descriptions of R-2307 and R-2308A.

DATE: Comments must be received on or before April 25, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWP-32, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy related aspects of the proposals. Send comments on environmental and land use aspects to: Department of Treasury, U.S. Customs Service, Mr. Robert O. Holliday, Director, Research and Development Division, 1301 Constitution Avenue NW., Washington, DC 20229. Phone: (202) 566-5371.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Area R-2309 located near Yuma, AZ. If approved, the U.S. Customs Service would deploy a tethered aerostat-borne radar system with the capability to detect low altitude suspect aircraft attempting to penetrate the airspace. The system would increase the probability of intercept-interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. In order to achieve this mission, it would be necessary to restrict airspace from the surface to an altitude of approximately 15,000 feet MSL within a 1½-nautical mile radius. In order to establish R-2309, it would be necessary to slightly amend the descriptions of R-2307 and R-2308A. R-2309 would also be added to the Continental Control Area. Sections 71.151 and 73.23 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2309 Yuma, AZ [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

4. Section 73.23 is amended as follows:

R-2309 Yuma, AZ [New]

Boundaries. A circular area 1½ nautical miles in a radius centered at lat. 33°00'58"N., long. 114°14'31"W.

Altitudes. Surface to 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. United States Customs Service.

R-2307 Yuma, AZ [Amended]

By adding to the end of the boundary description ", excluding R-2309".

R-2308A Yuma, AZ [Amended]

By adding to the end of the boundary description ", excluding R-2309".

Issued in Washington, DC, on March 3, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-6040 Filed 3-18-88; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

38 CFR Part 21

Extension of Independent Living Services Program

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) proposes to amend existing vocational rehabilitation regulations governing the provision of programs of independent living services. The Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986 extended the period during which programs of independent living services may be furnished eligible veterans under the vocational rehabilitation program through September 30, 1989. The proposed regulatory amendments implement the changes contained in the law and make other related changes designed to improve administration of these services.

DATES: Comments must be received on or before April 19, 1988. Comments will be available for public inspection until May 3, 1988. These amendments are effective October 28, 1986, except for the changes contained in §§ 21.162(c) and 21.294(b). Those changes will be effective upon final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington DC, 20420. All written comments received will be available for public inspection at the above address only in the Veterans Services Unit, Room 132 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2886.

SUPPLEMENTARY INFORMATION: Public Law 96-466, Veterans' Education and Training Amendments of 1980 established a four-year pilot program of independent living services as a part of the vocational rehabilitation program administered by the VA between the period from FY 1981 through FY 1985. A report to Congress was required by law on the conduct and results of the program, including recommendations for legislative and administrative changes. The VA recommended that the

independent living services program be extended. Following consideration of this report and other information, Congress approved extension of the program through FY 1989. In addition to the extension of the program other changes approved by Congress include:

1. Submission of a statistical report on the program by February 1, 1989; and

2. Insertion of the term "currently" in the statutory language to clarify that the VA is not required to determine that achievement of a vocational goal is permanently reasonably infeasible. The individual veteran need only be found not to be reasonably feasible for pursuit of a vocational goal at the time the determination is made by VA staff.

The VA is also proposing other regulatory amendments related to implementation of Pub. L. 99-576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, to improve administration of the program of independent living services. These changes include elimination of the requirement that program participation be approved by the Director, Vocational Rehabilitation and Education Service. In addition to proposing changes required by, or related to, implementation of the law, the VA is proposing to clarify its authority to use private, for-profit agencies to provide independent living services for veterans in vocational rehabilitation programs.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

The VA proposes to make the regulations implementing these changes retroactively effective, except for §§ 21.162(c) and 21.294(b), which are effective upon the date of final publication. These are interpretative rules which, with the exception of §§ 21.162(c) and 21.294(b), implement certain provisions of Pub. L. 99-576. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy. The proposed regulatory amendment enabling the VA to utilize private for profit agencies to provide independent living services as a part of a vocational rehabilitation program will only affect the few agencies providing these services and will not have any significant effect on small businesses. Other proposed changes only concern the eligibility and participation of individual veterans in this program.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan program, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 22, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.35, paragraphs (f)(2), (h), (i)(1)(i), and the authority citation following paragraph (i) are revised to read as follows:

§ 21.35 Definitions.

* * * * *

(f) * * *

(2) A program of independent living services and assistance (see paragraph (d) of this section) for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible; or

(Authority: 38 U.S.C. 1501(6); Pub. L. 99-576)

* * * * *

(h) *Vocational goal.*

(1) The term "vocational goal" means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests;

(2) The term "achievement of a vocational goal is reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances does not prevent the veteran from successfully pursuing a a vocational rehabilitation program and becoming gainfully employed in an occupation consistent with the veteran's abilities, aptitudes, and interests;

(3) The term "achievement of a vocational goal is not currently reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances at the time of the determination:

(i) Prevent the veteran from successfully achieving a vocational goal at that time; or

(ii) Are expected to worsen within the period needed to achieve a vocational goal and which would, therefore, make achievement not reasonably feasible.

(Authority: 38 U.S.C. 1501(8) 1501(9)(A)(i), Pub. L. 99-576)

(i) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible, such services include:

* * * * *

(Authority 38 U.S.C. 1501(9); Pub. L. 99-576)

2. In § 21.45 paragraph (a) and the authority citation at the end of the section are revised to read as follows:

§ 21.45 Extension beyond basic period of eligibility for a program of independent living services.

* * * * *

(a) The veteran's medical condition (service and nonservice-connected disabilities) is so severe that achievement of a vocational goal is not currently reasonably feasible, or

* * * * *

(Authority: 38 U.S.C. 1503(d); Pub. L. 99-576)

3. In § 21.50 paragraph (b)(5) and the authority citation which follows paragraph (b)(9) are revised to read as follows:

§ 21.50 Initial evaluation.

* * * * *

(b) * * *

(5) Determine as expeditiously as possible, without extended evaluation, whether achievement of a vocational goal is currently reasonably feasible.

* * * * *

(9) * * *

(Authority: 38 U.S.C. 220, 1506(d), 1516; Pub. L. 99-576)

* * * * *

4. In § 21.53 paragraphs (e) and (f) are revised to read as follows:

§ 21.53 Reasonable feasibility of achieving a vocational goal.

* * * * *

(e) *Criteria for reasonable feasibility not met.* (1) When the VA finds that the provisions of paragraph (d) of this section are not met, but the VA has not determined that achievement of a vocational goal is not currently reasonably feasible, the VA shall provide the rehabilitation services contained in § 21.35(i)(1)(i) of this part as appropriate;

(2) A finding that achievement of a vocational goal is not currently reasonably feasible without providing the services contained in §21.35(i)(1)(i) of this part requires:

(i) Consultation with the Vocational Rehabilitation Panel; and

(ii) Compelling evidence which establishes that achievement of a vocational goal is not currently reasonably feasible beyond any reasonable doubt.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99-576)

(f) *Responsible staff.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division shall determine whether achievement of a vocational goal is:

(1) Reasonably feasible; or

(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99-576)

5. In § 21.57 paragraphs (a) and (c) are revised to read as follows:

§ 21.57 Extended evaluation.

(a) *Purpose.* The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.

(Authority: 38 U.S.C. 1506(c), Pub. L. 99-576)

* * * * *

(c) *Determination.* The determination of the current reasonable feasibility of a vocational goal will be made at the earliest time possible during an extended evaluation, but no later than the end of the period of evaluation or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor.

(1) When a vocational goal is currently reasonably feasible, an Individualized Written Rehabilitation Plan (IWRP) will be developed as indicated in § 21.84 of this part.

(2) When a vocational goal is not currently reasonably feasible, information developed in the evaluation will be the basis for recommendations and referral to the Vocational Rehabilitation Panel. The panel will consider the case under provisions of § 21.62(b) of this part.

(Authority: 38 U.S.C. 1506(d), Pub. L. 99-576)

6. In § 21.62 paragraph (b)(3) and the authority citation following it are revised to read as follows:

§ 21.62 Duties of the Vocational Rehabilitation Panel.

* * * * *

(b) * * *

(3) *Rehabilitation not currently reasonably feasible.* The panel will review each finding by VR&C staff that a rehabilitation program is not currently reasonably feasible, if the panel has not previously participated in consideration of the case. This includes:

(i) A finding that vocational rehabilitation is not currently reasonably feasible; or

(ii) A finding that a program of independent living services is not currently reasonably feasible because:

(A) The veteran's level of independence cannot be measurably improved; or

(B) Such a program is medically contraindicated at this time.

(Authority: 38 U.S.C. 1506(a), Pub. L. 99-576)

* * * * *

7. In § 21.70 paragraph (b)(1)(i) and the authority citation at the end of paragraph (b) are revised to read as follows:

§ 21.70 Vocational rehabilitation.

* * * * *

(b) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible such needed services include:

* * * * *

(Authority: 38 U.S.C. 1501(9), Pub. L. 99-576)

* * * * *

8. In § 21.74 paragraphs (a), (c)(2), (c)(3) and the authority citation at the end of paragraph (c) are revised to read as follows:

§ 21.74 Extended evaluation.

(a) *General.* An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is currently reasonable feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in § 21.57(b) of this part.

(Authority: 38 U.S.C. 1506(a); Pub. L. 99-576)

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is a reasonable certainty that the current feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain technical assistance from the Vocational Rehabilitation Panel in each veteran's case before granting an extension of a period of extended evaluation.

(3) An extension beyond a total period of 18 months for additional periods of up to 6 months each may only be approved by the counseling psychologist if there is a substantial certainty that a determination of current feasibility may be made within the extended period. The concurrence of the Director, Vocational Rehabilitation and Education Service is also required for this extension.

(Authority: 38 U.S.C. 1505(a), 1506(b); Pub. L. 99-576)

9. Section 21.86 is revised to read as follows:

§ 21.86 Individualized extended evaluation plan.

(a) *Purpose.* The purpose of an IEEP is to identify the services needed for the VA to determine the veteran's current ability to achieve a vocational goal when this cannot reasonably be determined during the initial evaluation.

(Authority: 38 U.S.C. 1507; Pub. L. 99-576)

(b) *Elements of the plan.* An IEEP shall include the same elements as an IWRP except that:

(1) The long range goal shall be to determine achievement of a vocational goal is currently reasonably feasible;

(2) The intermediate objectives relate to problems of questions which must be resolved for the VA to determine the current reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1507(a); Pub. L. 99-576)

10. In § 21.90 paragraph (a) is revised to read as follows:

§ 21.90 Individualized independent living plan.

(a) *Purpose.* The purpose of the IILP is to identify the steps through which a veteran, whose disabilities are so severe that a vocational goal is not currently reasonably feasible, can become more independent in daily living within the family and community.

(Authority: 38 U.S.C. 1509; Pub. L. 99-576)

* * * * *

11. In § 21.160 paragraphs (c)(2) and (c)(4) are revised to read as follows:

§ 21.160 Independent living services.

* * * * *

(c) * * *

(2) As part of an extended evaluation to determine the current reasonable feasibility of achieving a vocational goal;

* * * * *

(4) As a program of rehabilitation services for eligible veterans for whom achievement of a vocational goal is not currently reasonably feasible. This program of rehabilitation services may be furnished to help the veteran:

(i) Function more independently in the family and community without the assistance of others or a reduced level of the assistance of others;

(ii) Become reasonably feasible for a vocational rehabilitation program; or

(iii) Become reasonably feasible for extended evaluation.

(Authority: 38 U.S.C. 1504(a)(15); Pub. L. 99-576)

* * * * *

12. In § 21.162 paragraph (a), the heading and introductory text of paragraph (b), paragraphs (b)(1) and (b)(3), and paragraph (c) are revised to read as follows:

§ 21.162 Participation in a problem of independent living services.

(a) *Approval of a program of independent living services.* A program of independent living services and assistance is approved when:

(1) The VA determines that achievement of a vocational goal is not currently reasonably feasible;

(2) The VA determines that the veteran's independence in daily living can be improved, and the gains made can reasonably be expected to continue following completion of the program;

(3) All steps required by § 21.90 and § 21.92 of this part for the development and preparation of an Individualized Independent Living Plan (IILP) have been completed; and

(4) The Vocational Rehabilitation and Counseling Officer concurs in the IILP.

(Authority: 38 U.S.C. 1509, 1520, Pub. L. 99-576)

(b) *Special considerations affecting approval by the Director, Vocational Rehabilitation and Education Service.* The Director, Vocational Rehabilitation and Education Service, shall consider the following factors before approving the participation of a veteran in an independent living program:

(1) Conformity of the proposed plan with provisions of paragraph (a) of this section;

(2) * * *

(3) To the maximum extent feasible, a substantial portion of veterans provided with programs of independent living services and assistance shall be receiving long-term care in VA hospitals and nursing homes;

* * * * *

(c) *Limitations.* (1) A program of independent living services and assistance may not be approved after September 30, 1989. Programs authorized prior to that date may be continued until completion or other termination;

(2) Any contract for services initiated before September 30, 1989, may be continued in effect for the purpose of providing necessary services and assistance;

(3) The limitations on provision of independent living services by for-profit agencies and facilities to veterans for whom such services constitute the whole of a program are not applicable to veterans being provided independent living services as a part of a rehabilitation program during periods identified in § 21.160(c)(1), (c)(2), (c)(3) of this part. For-profit agencies and facilities may be used to provide specific independent living services as a part of a rehabilitation program during the periods described above under the following conditions:

(i) Necessary services are not reasonably available through public or private nonprofit agencies; and

(ii) The facility meets the criteria contained in § 21.294(c) of this part.

(Authority: 38 U.S.C. 1504(a)(15), Pub. L. 99-576)

13. In § 21.294 paragraph (b)(2) is revised and paragraph (b)(3) is added to read as follows:

§ 21.294 Selecting the training or rehabilitation facility.

* * * * *

(b) * * *

(2) The VA will only utilize public and nonprofit agencies to furnish independent living services, when such services constitute the whole of a rehabilitation program. These facilities must be:

(i) VA medical centers which provide independent living services;

(ii) Facilities which meet standards established by the State rehabilitation agency for rehabilitation facilities or for providers of independent living services; or

(iii) Facilities which are neither approved nor disapproved by the State rehabilitation agency, but are determined by the VA to be able to provide necessary services in an individual veteran's case.

(3) The VA may utilize for-profit facilities and agencies to provide specific independent living services as a part of a rehabilitation program under the conditions specified in § 21.162(c) of this part. These agencies and facilities must meet the standards established by local, state (including the State rehabilitation agency), and federal agencies which are applicable to for-profit facilities and agencies offfering independent living services.

(Authority: 38 U.S.C. 1515, 1520(a), Pub. L. 99-576)

* * * * *

[FR Doc. 88-5995 Filed 3-18-88; 8:45 am]

BILLING CODE 8320-01-M

Notices

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

MiniGrants; Availability of Funds

AGENCY: Action.

ACTION: Notice of availability of funds.

SUMMARY: This notice announces the availability of funds for Fiscal Year 1988 under the ACTION MiniGrant Program authorized by the Domestic Volunteer Service Act of 1973, as amended (P. L. 93–113, Title I, Part C, 42 U.S.C. 4993).

Pursuant to MiniGrant Guidelines published in the **Federal Register** on October 12, 1984, (49 40063, ACTION has established the MiniGrant funding priority for Fiscal Year 1988. The project areas for which MiniGrants will be considered are as follows:

(1) Projects that focus either on illicit drug/alcohol use prevention and education activities for youth or the prevention of prescribed or over-the-counter drug misuse or abuse by senior citizens. These applications should:

—In the case of youth, provide a clear no-use message;
—Focus on prevention rather than intervention or treatment;
—Emphasize strengthening the family;
—Provide positive alternatives to illicit drug use;
—Create or enhance community coalitions against illicit drug/alcohol use; and
—Mobilize local resources to continue the project.

Applications incorporating responsible use of illicit drug methodologies will not be considered.

(2) Project that address specific problems of pregnant teenagers, teenage parents, and their families, in particular social, nutritional, and economic problems.

—Projects targeted to strengthen the family and parenting skill, e.g., guidance for families of pregnant teenagers and teenage parents.
—Projects targeted to encourage proper pre-natal care by pregnant teenagers with particular emphasis on the discouragement of alcohol and drug abuse.
—Projects targeted to establish special support systems for pregnant teenagers, e.g. big sister programs that foster peer counseling or intergenerational activities.
—Projects targeted to enhance the employability of teenage parents, e.g., literacy tutoring, job training, and accessibility to day care.

Priority will be given to applications that include senior citizens intergenerational activities, community-wide coalition building, and mobilization of local resources to continue the project.

Subject to the availability of Fiscal Year 1988 funding, approximately $253,000 will be available for grants averaging $8,000–$9,000 in size.

Eligibility: Public and private non-profit organizations which utilize, or will utilize volunteers as an integral part of their provision of services may apply for grants.

Deadlines: One signed original and two copies of all completed applications will be submitted to the appropriate ACTION State Office, no later than 5:00 p.m. local standard time on May 2, 1988. Only those applications received at the appropriate office by the deadline will be eligible. Addresses of the State Offices will be included in the application package. In addition to the address list, the application package will contain an application form, a copy of the MiniGrant guidelines which were published in the **Federal Register**, October 12, 1984, and a guide to help individuals complete the application.

Awards: Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amounts of funds available, or any part thereof.

To receive an application package, please contact your ACTION State Office. Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction.

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222–1039
ACTION State Office, Abraham Ribicoff Federal Building, 450 Main Street, Room 524, Hartford, CT 06103–3002
ACTION State Office, Federal Bldg., Rm 305, 76 Pearl Street, Portland, ME 04101–4188
ACTION State Office, 10 Causeway Street, Room 467, Boston, MA 02222–1038
ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301–3939, (New Hampshire/Vermont)
ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903–2882

Region II

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206
ACTION State Office, 402 East State St., Room 426, Trenton, NJ 08608–1507
ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206
ACTION State Branch Office, U.S. Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207–2923
ACTION State Office, Frederico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918–2241, (Puerto Rico/Virgin Islands)

Region III

ACTION Regional Office, U.S. Customs House, 2nd & Chestnut St., Rm 108, Philadelphia, PA 19106–2912
ACTION State Office, Federal Building, Room 371–D, 600 Federal Place, Louisville, KY 40202–2230
ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, (Delaware/Maryland)
ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd., Columbus, OH 43215–2888
ACTION State Office, U.S. Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106–2998
ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832, (Virginia/Dist. of Columbia)
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409

Region IV

ACTION Regional Office, 101 Marietta St., NW., Suite 1003, Atlanta, GA 30323–2301

ACTION State Office, 2121 8th Avenue North, Room 722, Birmingham, AL 35203–2307
ACTION State Office, 930 Woodstock Road, Suite 221, Orlando, FL 32803–3750
ACTION State Office, 75 Piedmont Ave., NE., Suite 412, Atlanta, GA 30303–2587
ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269–1092
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601–1739
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430
ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203–3889

Region V

ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922
ACTION State Office, Federal Building, Rm 339, 210 Walnut, Des Moines, IA 50309–2195
ACTION State Office, Federal Bldg. Room 652, 231 West Lafayette Blvd., Detroit, MI 48226–2799
ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596
ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202–4507

Region VI

ACTION State Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242–0696
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201
ACTION State Office, Federal Building, Room 248, 444 S.E. Quincy, Topeka, KS 66603–3501
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009
ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026
ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102–6093
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349
ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167
ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649
ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Rm 192, Helena, MT 59626–0101
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896
ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, (North & South Dakota)

Region IX

ACTION Regionl Office, 211 Main Street, Rm 530, San Francisco, CA 94105–1914
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101–2198
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190
ACTION State Branch Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974
ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671
ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850, (Hawaii/Guam/American Samoa)

Region X

ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1208
ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103
ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745
ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103, (Alaska)
ACTION State Office, Federal Bldg., Room 647, 511 NW. Broadway, Portland, OR 97209–3416

Signed at Washington, DC, this 11th day of March.

Donna M. Alvarado,

Director.

[FR Doc. 88–6074 Filed 3–18–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88–029]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document advises the public that twelve permit applications for release into the environment of various genetically engineered organisms are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with the regulations in 7 CFR Part 340 which regulate the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 634, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7472.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit prior to introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products which are deemed "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining limited permits for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following permit applications for release into the environment, which are being reviewed by the Agency:

Accession No.	Date received	Organism	Field test location
87-329-01	11-25-87	Genetically engineered tomatoes for tobacco mosaic virus tolerence	Florida.
87-329-02	11-25-87	Genetically engineered tomatoes for lepidopteran insect tolerance	Do.
87-331-01	11-27-87	Genetically engineered tomatoes for sulfonylulurea herbicide tolerance	Do.
87-355-01	12-21-87	Genetically engineered microorganism to control lepidopteran insects	Maryland.
88-011-01	1-11-88	Genetically engineered tomatoes for glyphosate herbicide tolerance	California.
88-028-01	1-28-88	Genetically engineered tobacco for alfalfa mosaic virus tolerance	Wisconsin.
88-029-02	1-29-88	Genetically engineered tomatoes for lepidopteran insect tolerance	Do.
88-036-01	2-5-88	Genetically engineered tobacco for lepidopteran insect tolerance	North Carolina.
88-041-01	2-10-88	Genetically engineered tomatoes for tobacco mosaic virus tolerance	Illinois.
88-041-04	2-10-88	Genetically engineered tomatoes for lepidopteran insect tolerance	Do.
88-041-07	2-10-88	Genetically engineered tomatoes for glyphosate herbicide tolerance	Do.
88-054-01	2-23-88	Genetically engineered tobacco for sulfonylurea herbicide tolerance	North Carolina.

Done at Washington, DC, this 16th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-6131 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Shoshone Critical Area, Treatment RC&D Measure, Lincoln County, ID; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Rodney M. Alt, Acting State Conservationist, Soil Conservation Service, 304 North 8th Street, Room 345, Boise, Idaho 83702, telephone (208) 334-1601

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Shoshone Cricial Area Treatment RC&D Measure, Lincoln County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rodney M. Alt, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

Shoshone Critical Area Treatment RC&D Measure will provide treatment to nine actively eroding sections of Little Wood River through the town of Shoshone, Lincoln County, Idaho. Planned treatments to control the severe erosion and sedimentation problem on 9 sites includes approximately 650 feet of either vegetative barriers, rock riprap and gabion baskets on the eroding banks.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Rodney M. Alt. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject tot he provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: March 11, 1988.

Rodney M. Alt,

Acting State Conservationist.

[FR Doc. 88-6087 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-16-M

Calapooya Creek Watershed, OR; Deauthorization of Federal Finding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Calapooya Creek Watershed project, Douglas County, Oregon, effective on February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, Federal Building, 1220 SW. Third Avenue, Room 1640, Portland, Oregon 97204, telephone (503) 221-2751.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Jack P. Kanalz

State Conservationist.

March 8, 1988.

[FR Doc. 88-6088 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-16-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98-375). The meeting will be held in Seville, Spain and will be chaired by Commission Chairman John N. Goudie.

DATES: Friday, April 15, 1988 at 9:30 a.m. (Open). Saturday, April 16, 1988 at 9:00 a.m. (Open).

ADDRESSES: On April 15, from 9:30 a.m. to 12:00 p.m. at the Hotel Sol, "Salon Bali," level "R," Seville, Spain. April 16 from 9:00 a.m. to 12:00 p.m. at the Hotel Sol, "Salon Bali," level "R," Seville, Spain.

FOR FURTHER INFORMATION CONTACT: Dr. John Alexander Williams, (202) 632-1992.

SUPPLEMENTARY INFORMATION: On April 15 and 16, the Commission will meet to

discuss proposals for endorsement of Quincentenary projects and the creation of advisory committees. The Commission will also review committee recommendations and hear presentations on Spain's plans for 1992, including the Seville World's Fair, along with a financial review of the Commission, and fundraising strategies for corporate participation in the Quincentenary.

John Alexander Williams,
Director.

[FR Doc. 88-6117 Filed 3-18-88; 8:45 am]
BILLING CODE 6820-RB-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 16-88]

Proposed Foreign-Trade Zone, North Haven, CT; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater New Haven Chamber of Commerce, Inc. (GNH), a non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone in the Town of North Haven, Connecticut, within the New Haven Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 7, 1988. Pursuant to section 7-136d of the General Statutes of Connecticut (P.A. 76-160, S.1,5), the Town of North Haven authorized GNH to apply for authority to establish a foreign-trade zone in that community.

The proposal calls for a general-purpose zone of 10 acres within a 30-acre industrial plant site owned by O.F. Mossberg & Sons, Inc., at 7 Grasso Avenue in the Town of North Haven. There are two buildings at the site with 107,000 sq. ft. of space, of which some 5,000 sq. ft. would be available for initial zone warehousing activity.

The application contains evidence of the need for zone services in the greater New Haven area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of pharmaceuticals, chemicals, glass products and automotive parts. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, Massachusetts 02110-2104; and Colonel Thomas A. Rhen, U.S. Army Engineer Division, New England, 420 Trapelo Rd., Waltham, Massachusetts 02254-9149.

As part of its investigation, the examiners committee will hold a public hearing on April 20, 1988, beginning at 9 a.m., in the Community Room of the North Haven Memorial Library, 17 Elm St. North Haven, CT.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202-377-2862) by April 12, 1988. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 20, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director, U.S. Customs Service, Federal Building, 150 Court Street, New Haven, Connecticut 06511

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 14, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-6121 Filed 3-18-88; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

President's Export Council Executive Committee and the Full Council; Closed and Open Meetings

Meetings of the President's Export Council Executive Committee and the Full Council will be held April 5, 1988, at the Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to U.S. export trade.

Executive Committee Meeting—Closed Session: 11:45 a.m.-1:15 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with fiscal and monetary policies, trade negotiating strategies, and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

Full Council Meeting—Open Session: 1:30 p.m.-4:30 p.m., Ballroom Center. Discussion of the EXPORT NOW initiative, the U.S. manufacturing sector, and other related trade matters.

A limited number of seats are available for the open Full Council meeting. For further information or copies of the minutes, contact Sylvia Lino (202) 377-1125.

Date: March 15, 1988.

Henry P. Misisco,
Director, Office of Planning and Coordination.

[FR Doc. 88-6070 Filed 3-18-88; 8:45 am]
BILLING CODE 3510-DR-M

Short-Supply Review on Certain Steel Products; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain types of grades 304 and 316 stainless steel sheet.

DATE: Comments must be submitted on or before March 31, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import

Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.–EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for the following types of stainless steel sheet, generally meeting American Society of Testing Materials specification A–240:

1. AISI grade 304 stainless steel sheet, bright annealed, with a width of 17.5 inches and a thickness of 0.036 inch;

2. AISI grade 304 stainless steel sheet, pickled and plannished or pinch-passed finished, with a width of 33.86 inches and a thickness of 0.024 inch;

3. AISI grade 316 stainless steel sheet, bright annealed, with a width ranging from 17.5 to 30.0 inches and a thickness of 0.036 inch; and

4. AISI grade 316 stainless steel sheet, pickled and plannished or pinch-passed finished, with a width ranging from 19.17 to 46.26 inches and a thickness ranging from 0.020 to 0.036 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 31, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file.

The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 15, 1988.

[FR Doc. 88–6122 Filed 3–18–88; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 16, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 22, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letters published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported to the United States during the periods which began on April 1, 1987 and extended through December 31, 1987 and on January 1, 1988 and extends through March 31, 1988.

Background

A CITA directive dated March 23, 1987 was published in the **Federal Register** (52 FR 9684) which established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1987 and extends through March 31, 1988. Subsequent directives dated December 21, 1987 were published in the **Federal Register** (52 FR 49061 and 49062) which amended these limits for two new restraint periods which began on April 1, 1987 and extended through December 31, 1987 and which began on January 1, 1988 and extends through March 31, 1988.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of August 7 and 29, 1985, as amended, the current limits for Categories 218, 219, 225/317/326, 314, 334/335, 336, 337, 352, 359/659, 363, 369–D, 433, 445/446, 604, 624, 638/639, 647/648, 666 and 669–P are being increased for carryover of unused quota of the prorated period April 1, 1987 through December 31, 1987. The limits for the period April 1, 1987 through December 31, 1987 are being decreased for shortfall used in a separate directive.

The unit of measure for Categories 359/659 should be corrected to square yards equivalent in the December 21, 1987 directive establishing the limits for January 1, 1988 through March 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 16, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the three-month period which began on January 1, 1988 and extends through March 31, 1988.

Effective on March 22, 1988, the directive of December 21, 1987 is amended to include the following adjusted limits, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985, as amended: [1]

Category	Adjusted 3-month limit [1]
218	3,383,267 square yards.
219	4,798,076 square yards.
225/317/326	5,776,738 square yards.
314	3,567,635 square yards.
334/335	34,782 dozen.
336	22,692 dozen.
337	103,222 dozen.
352	265,543 dozen.

[1] The provisions of the bilateral agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted 3-month limit [1]
359/659	4,694,695 square yards equivalent.
363	6,979,416 numbers.
369-D [2]	606,296 pounds.
433	15,438 dozen.
445/446	50,839 dozen.
604	224,578 pounds.
624	4,328,876 square yards.
638/639	212,909 dozen.
647/648	487,877 dozen.
666	1,389,178 pounds.
669-P [3]	1,901,744 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369-D, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, and 366.2860.
[3] In Category 669-P, man-made fiber bags in TSUSA number 385.5300.

The unit of measure for Categories 359/659 should be corrected to square yards equivalent in the December 21, 1987 directive establishing the limits for January 1, 1988 through March 31, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth to Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 16, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs, *Department of the Treasury, Washington, D.C. 20229*

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985, as amended, between the Governments of the United States and the Federative Republic of Brazil, I request that, effective on March 22, 1988, you adjust the limits established in the directive of December 21, 1987 for cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the period which began on April 1, 1987 and extended through December 31, 1987:

Category	Adjusted limit [1]
310/318	604,257 square yards.
314	716,781 square yards.
319	8,226,616 square yards.
334/335	54,612 dozen.
336	16,635 dozen.
337	6,891 dozen.
352	127,717 dozen.
359/659	1,323,164 square yards equivalent.
363	8,189,184 numbers.
369-D [2]	132,994 pounds.
433	1,227 dozen.
445/446	14,448 dozen.
604	252,422 pounds.
614	2,070,374 square yards.
638/639	11,811 dozen.
647/648	17,743 dozen.
666	408,582 pounds.
669-P [3]	345,456 pounds.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1987.
[2] In Category 369-D, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
[3] In Category 669-P, man-made fiber bags in TSUSA number 385.5300.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-6108 Filed 3-18-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATE: April 23-28, 1988 (Detailed agenda follows).

ADDRESS: Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia, unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meeting and discussions:

Saturday, 23 April 1988

1:00 p.m.-8:00 p.m.
Registration: Radisson Mark Plaza Hotel, Alexandria, Virginia

Sunday, 24 April 1988

8:00 a.m.-9:00 a.m.
No-host breakfast for new DACOWITS members sponsored by the Vice Chair for New Member Orientation
9:00 a.m.-10:50 a.m.
Chair's Procedural Session and no-host breakfast for current DACOWITS members only
11:00 a.m.-11:30 a.m.
OSD Overview and Update on OSD Task Force on Women in the Military
12:00 noon-1:30 p.m.
Get Acquainted Luncheon (Current DACOWITS members MilReps, and Liaison Officers only)
1:30 p.m.-3:00 p.m.
Comprehensive Navy Briefing
—Update on Navy Study Group Report on Women in the Military
—Navy Action Plan for Assignment of women to nontraditional ratings and officer communities
—Naval Mobile Construction Battalion
—Assignment of Coast Guard personnel to Navy ships
3:15 p.m.-4:45 p.m.
Comprehensive Marine Corps Briefing
—Results of Marine Corps Study Group on Women in the Military
—Implementation of Enlisted Women Marine Review
—Marine Officer Classification, Assignment and Deployment Policies
5:00 p.m.-7:00 p.m.
Subcommittee Sessions (Evaluate Service Responses) Subcommittee #3 briefings: 1986 Reserve Components) Surveys of Officer and Enlisted Personnel and Military Spouses
8:00 p.m.-9:00 p.m.
Social Buffet

Monday, 25 April 1988

9:30 a.m.-10:00 a.m.
Official Opening—Pentagon Auditorium (5A1070)
10:30 a.m.-12:00 noon
Coast Guard Briefing: Assignment of Women Officers to Coast Guard Cutters
—Assignment of Women Enlisted members to leadership positions in Coast Guard cutters
12:00 noon-2:00 p.m.
Installation Visit Luncheon
2:00 p.m.-3:30 p.m.
Comprehensive Army Briefings
—Direct Combat Probability Coding
—Women in Army Forward Support Battalions
—Women in Field Artillery
3:45 p.m.-5:00 p.m.
Subcommittee Sessions
—Subcommittee #3 briefing: Coast Guard Uniform Board Update
—Subcommittee #3 OASD(HA) preview of OB/GYN Health Care Survey (FRI #25)
7:00 p.m.-10:30 p.m.
OSD Reception and Dinner—Officer's Club, Bolling Air Force Base (By Invitation Only)

Tuesday, 26 April 1988

8:30 a.m.-11:00 a.m.

Field trip to Air Force One—for DACOWITS Members only
11:30 a.m.–1:30 p.m.
OSD Luncheon (By Invitation Only)
1:35 p.m.–3:00 p.m.
Field trip to White House and meet with White House official—for DACOWITS members only
3:45 p.m.–5:45 p.m.
Subcommittee Sessions

Wednesday, 27 April 1988

8:00 a.m.–9:30 a.m.
No host DACOWITS Executive Committee breakfast
9:30 a.m.–10:00 a.m.
Presentation by Member of the Public
10:00 a.m.–12:00 noon
Briefing: Danish and Canadian Studies about Women in the Military
12:30 p.m.–2:45 p.m.
Subcommittee Sessions (tentative)
2:45 p.m.–5:30 p.m.
Executive Committee Mark-up
7:00 p.m.–9:30 p.m.
Resume Executive Committee Mark-up

Thursday, 28 April 1988

7:30 a.m.–8:00 a.m.
Individual Review of Resolutions
8:00 a.m.–10:00 a.m.
General Business Session
Adjourn

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 4, 1988.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentation by members of the public will be permitted only from 9:30 a.m. to 10:00 a.m. on Wednesday, April 27, 1988, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by April 15, 1988.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chairman or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chairman and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Thursday, April 28, 1988.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
March 15, 1988.

[FR Doc. 88–6130 Filed 3–18–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88–283–000 et al.]

Gulf Power Company et al.; Electric Rate and Corporate Regulation Filings

March 14, 1988.

Take notice that the following filings have been made with the Commission:

1. Gulf Power Company [Docket No. ER88–283–000]

Take notice that on March 7, 1988, Gulf Power Company tendered for filing a rate schedule constituting a transmission service agreement between Gulf Power Company and Bay Resource Management, Inc. The agreement between Gulf Power Company and Bay Resource Management, Inc. provides for baseload capacity service and transmission service for the customer's facility located in Bay County, Florida. Charges for such services are to based on formulary rates set forth in the transmission service agreement.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company [Docket No. ER88–284–000]

Take notice that on March 7, 1988, San Diego Gas & Electric Company (SDG&E) tendered for filing a Notice of Termination of SDG&E FERC Electric Tariff 1st Revised Volume No. 1, Original Sheet Nos. 1–8.

SDG&E requests termination of said Tariff as of April 30, 1988, pursuant to its terms and to make this the effective date of termination.

Copies of this filing have been served upon the Public Utilities Commission of the State of California.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this document.

3. Tampa Electric Company

[Docket No. ER88–282–000]

Take notice that on March 4, 1988, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule J providing for negotiated interchange service between Tampa Electric and Seminole Electric Cooperative (Seminole). Tampa Electric states that Service Schedule J is submitted for inclusion as a supplement to the existing agreement for interchange service between Tampa Electric and Seminole, designated as Tampa Electric's Rate Schedule FERC No. 22.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a Letter of Commitment providing for the firm interchange of 50 megawatts of capacity and energy between Tampa Electric and Seminole.

Tampa Electric proposes an effective date of March 7, 1988 for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-6077 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-281-000 et al.]

James River Paper Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 14, 1988.

Take notice that the following filings have been made with the Commission.

1. James River Paper Company

[Docket No. QF88-281-000]

On March 1, 1988, James River Paper Company (Applicant), of 100 Island Avenue, Parchment, Michigan 49004, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the existing James River powerhouse in Parchment, Michigan. The facility will consist of two existing extraction/condensing turbine generators, a new combustion turbine generator, and a new heat recovery steam generator. Thermal energy recovered from the facility will be used for heating and for industrial processes. Primary energy source will be natural gas. The net electric power production capacity of the facility will be 122.8 MW. Startup of the new facility is expected to begin in the last quarter of 1990.

2. Union Carbide Corporation, Linde Division

[Docket No. QF88-277-000]

On February 23, 1988, Union Carbide Corporation, Linde Division, 39 Old Ridgebury Road, Danbury, Connecticut 06817-0001, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be a bottoming cycle cogeneration facility. It will use waste heat as its primary energy source. It will have one condensing extraction steam turbine and generator. The facility will have a nominal rated electric power production capacity of 11 MW. It will be located on the property of Union Carbide Corporation, Linde Division, in Wilmington, California. Installation of the facility will begin approximately June, 1989.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6078 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-348-001]

Anadarko Petroleum Corp., et al.; Application for Extension of Blanket Limited-Term Abandonment and Certificate With Pregranted Abandonment

March 16, 1988.

Take notice that on March 10, 1988, Anadarko Petroleum Corporation, APX Corporation (formerly Pan Eastern Exploration Company), Matagorda Island Development Corporation, Matagorda Island Exploration Corporation and APX Western Corporation (formerly Panhandle Western Gas Company) (together referred to as Applicant) of P.O. Box 1330, Houston, Texas 77251-1330, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term abandonment and certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for a term through March 31, 1989, or the effective date of Order No. 490, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6136 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-39-003 et al.]

Conoco Inc., et al.; Applications for Extension of Blanket Limited-Term Abandonments and Certificates With Pregranted Abandonment [1]

March 14, 1988.

Take notice that each Applicant listed herein has filed an application pursuant

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term abandonment and certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 25, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI86-39-000;3-4-88	Conoco Inc.[1] P.O. Box 2197, Houston, Texas 77252.	3 years.
CI88-356-000;3-8-88 [2]	Seagull Energy E & P Inc., c/o Seagull Energy Corporation, 1001 Fannin, Suite 1700, Houston, Texas 77002.	3 years.

[1] Applicant also requests blanket sales authorization with pregranted abandonment authorization for uncommitted gas and previously abandoned gas.
[2] Applicant seeks extension of the authorizations previously granted in Docket Nos. CI86-7-002 and CI86-7-003.

[FR Doc. 88-6079 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-71-021 et al.]

Enron (Northern Natural Gas Co.), et al.; Filing of Pipeline Refund Reports and Refund Plans

March 16, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before April 4, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.
10/30/87	Enron (Northern Natural Gas Company).	RP82-71-021.
1/19/88	Mountain Fuel Resources.	RP86-7-005.
1/27/88	Algonquin Gas Transmission Company.	RP72-110-045.
2/1/88	Ozark Gas Pipe Line Corporation.	RP84-53-008.
2/18/88	Enron (Northern Natural Gas Company).	RP82-71-022.
3/8/88	Panhandle Eastern Pipe Line Company.	RP82-58-025.

[FR Doc. 88-6135 Filed 3-18-88; 8:45 am]

Billing Code 6717-01-M

[Docket Nos. CP86-676-003, CP86-676-004, RP88-64-001, and RP88-64-002]

Equitrans, Inc.; Compliance Filings

March 15, 1988.

Take notice that on March 8, 1988, Equitrans, Inc. (Equitrans) tendered for filing in Docket Nos. CP86-676-003 and RP88-64-001 certain pages that were inadvertently omitted from its compliance filing of February 26, 1988. Equitrans states that the following pages were to be included in Tab "D" of the first bound volume of the filing entitled "Compliance Filing."

(1) *Immediately behind Tab "D"*

Letter to Lois D. Cashell
Certificate of Service
Service List
Table of Contents

(2) *Tab Statement "N"*—Schedule N-5, sheets 3 and 4 of 31

Equitrans states that parties on the service list were not supplied the attachments filed on March 8, 1988, since their copies were corrected prior to mailing.

On March 10, 1988, Equitrans tendered for filing in Docket Nos. CP86-676-004, and RP88-64-002 the following FERC Gas tariff sheets in compliance with the Commission's order issued January 20, 1988:

Original Volume No. 1

Substitute Original Sheet No. 17
Substitute Original Sheet No. 19
Substitute Original Sheet No. 20
Substitute Original Sheet No. 23

Original Volume No. 3

Substitute Original Sheet No. 2
Substitute Original Sheet No. 4
Substitute Original Sheet No. 8

Equitrans states that copies of the March 10, 1988 filing have been served on all its jurisdictional customers and affected state regulatory commissions. Equitrans requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective April 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6134 filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-7-004 et al.]

Seagull Marketing Services, Inc., et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

March 14, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 25, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI86-7-004; Mar. 8, 1988	Seagull Marketing Sevices, Inc.,[1] c/o Seagull Energy Corp., 1001 Fannin, Suite 1700, Houston, TX 77002.	3 years.
CI87-826-001; Mar. 7, 1988	Standard Gas Marketing Co., 5151 San Felipe, P.O. Box 4587, Houston, TX 77210	Do.

[1] Applicant also requests authorization to sell contractually uncommitted gas.

[FR Doc. 88-6080 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3351-5]

Assessment of Naphthalene As a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of naphthalene assessment results and solicitation of information.

SUMMARY: This notice announces the results of EPA's assessment of naphthalene under the Clean Air Act (CAA). The EPA has concluded that the health data base for naphthalene is limited in several respects. The available data are considered inadequate to determine the carcinogenic potential of naphthalene; as such, the Agency has classified naphthalene in Group D (not classifiable as to human carcinogenicity) under its weight-of-evidence criteria for cancer data. The health data base for naphthalene is also limited with regard to noncancer health effects. Although exposure to high concentrations of naphthalene has been associated with local and systemic health effects in humans and laboratory animals, there is little information on the health effects of naphthalene at lower exposure levels. Given this lack of information, the EPA has determined that regulation of naphthalene under the CAA is not warranted at this time.

Given the limited opportunity for prior public review of the health and exposure information incorporated in this notice, the Agency is soliciting comment on this determination. This finding has no effect on the regulation of naphthalene in order to attain the national ambient air quality standards for ozone or particulate matter. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of naphthalene.

DATE: Written comments pertaining to this notice must be received on or before June 20, 1988.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A-130), U.S. Environmental Protection Agency, Attn: Docket No. A-8710, 401 M Street SW., Washington, DC 20460. Docket No. A-8710, which contains information relevant to this notice, is located in the Central Docket Section of the EPA, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. The Docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Information

Information on the availability of the health assessment summary document for naphthalene, "Summary Review of Health Effects Associated with naphthalene: Health Issue Assessment," can be obtained from ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513-684-7562 commercial/684-7562 FTS). The document (PB 88-172-374) is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. The above document and other information on the sources, emissions, and environmental fate are summarized in several reports which are found in the docket.

FOR FURTHER INFORMATION CONTACT: Robert Kellam, Pollutant Assessment Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711 (Telephone: 919-541-5647 commercial/629-5647 FTS).

SUPPLEMENTARY INFORMATION: The EPA initiated an assessment of naphthalene based on the large production volume and the potential for adverse health effects associated with exposure to naphthalene in the ambient air. In the course of this assessment, the Agency collected the available relevant information and today's notice provides a summary of this information on the

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

following topics: Chemical characterization, production and uses, sources and emissions, atmospheric fate, health effects, monitored ambient air concentrations, exposure estimation, risk characterization, and existing regulations and guidelines.

Chemical Characterization

Naphthalene (CAS No. 91-20-3) is a bicyclic aromatic hydrocarbon with the empirical formula $C_{10}H_8$ and a molecular weight of 128.16. Pure naphthalene is a white, crystalline solid at room temperature. Naphthalene is practically insoluble in water and has a low vapor pressure. At 25 °C, 1 part per million is equal to 5.2 milligrams per cubic meter (mg/m^3) (U.S. EPA, 1987a).

Production and Uses

In 1985, naphthalene production capacity was approximately 184,000 megagrams. Naphthalene is used as an intermediate in the manufacture of phthalic anhydride (74% of naphthalene consumption in 1983), carbamate insecticides (7%), surface active agents (7%), synthetic tanning agents (6%) and miscellaneous organic chemicals (2%). The only direct use of naphthalene is as a moth repellent (4% of consumption) (U.S. EPA, 1986a).

Sources and Emissions

Naphthalene is released into the environment via industrial gaseous and particulate emissions, aqueous waste streams, and through consumer uses. A summary of major sources of naphthalene emissions to the air and their respective estimated emissions is shown in Table 1. Based on the available information, the largest sources of naphthalene emissions to the atmosphere are coke by-product recovery facilities and plants that produce phthalic anhydride and naphthalene (U.S. EPA, 1986a).

Atmospheric Fate

In the atmosphere, naphthalene exists predominantly in the vapor phase and is subject to various photo-oxidative or oxidative reactions. Naphthalene may be subject to hydroxyl radical attack during the daytime and to nitrate radical attack at night. A daytime half-life of approximately 8 hours and a nighttime half-life of approximately 15 hours have been estimated (U.S. EPA, 1987a).

Health Effects

The Agency has prepared a document entitled "Summary Review of the Health Effects Associated with Naphthalene: Health Issue Assessment" (U.S. EPA, 1987a). This document discusses the relevant data available for assessing the health effects associated with exposure to naphthalene in the ambient air. This health information is summarized below.

TABLE 1.—SOURCES OF NAPHTHALENE AND ESTIMATED EMISSIONS [a]

Emission source	Estimated emissions (Mg/yr)
Coke byproduct recovery [b]	80
Naphthalene production [c]	
Coal tar	30.7
Petroleum	22.3
Naphthalene end uses:	
Phthalic anhydride	54.8
Carbamate insecticides	4.6
Surface active agents	7.4
Synthetic tanning agents	6.4
Miscellaneous chemicals	1.4
Miscellaneous sources [d]	5.1
Total	212.7

[a] From U.S. EPA (1986a).
[b] An estimated 80% or more of naphthalene emissions from this source category will be controlled under the proposed benzene coke byproduct recovery regulation (49 FR 23522, June 6, 1984). The estimate of 80 Mg/yr reflects naphthalene emissions prior to the benzene regulation.
[c] Naphthalene emissions from production and handling of moth repellent are included in this source category since this product is made directly at naphthalene production facilities.
[d] Naphthalene emissions from combustion processes, primarily residential wood and coal hearing.

Carcinogenicity and Mutagenicity

Only one published study has examined the oncogenic response of mice to naphthalene following inhalation exposure (Adkins et al., 1986). In this investigation the strain A mouse lung tumor bioassay was used as a short-term *in vivo* model for predicting potential carcinogenesis. Exposure of strain A/J mice for 6 months to 10 and 30 ppm (52 and 156 mg/m^3, respectively) naphthalene did not cause a significant change in the number of tumors per mouse but did show a significant increase in the number of tumors per tumor-bearing lung. Although statistically significant, the actual change in the number of tumors per tumor-bearing lung was relatively small, increasing from 1.00 in unexposed mice to 1.25 in mice exposed to both 10 and 30 ppm. The results of this study are considered inconclusive with regard to the oncogenic potential of naphthalene.

Effects of chronic exposure of mice to 10 and 30 ppm naphthalene are being examined in a 2-year inhalation study by the National Toxicology Program (NTP). Preliminary results of the NTP study have been submitted by industry to the Agency pursuant to section 8(e), the "substantial risk" information reporting provision of the Toxic Substances Control Act. After the full report of the findings has been peer-reviewed by the NTP Board of Scientific Counselors in late 1988, the EPA will evaluate the results to determine if any changes in the current regulatory assessment are warranted.

There is only limited information on the carcinogenic potential of naphthalene following oral, dermal or subcutaneous administration in laboratory animals. With the exception of a study by Knake (1956) in which mice and rats were exposed to naphthalene by the dermal and subcutaneous routes, respectively, the available studies have failed to demonstrate any carcinogenic activity. The value of Knake's study for assessing carcinogenicity is limited because impurities in the coal tar-derived naphthalene used in the study may be carcinogenic, the vehicle in the mouse skin painting study has been shown to cause leukemias, and the site of subcutaneous injection in the rat study was painted with carbofuchsin, a known carcinogen, prior to injection.

Naphthalene has not been adequately tested for mutagenic potential. In the two reports available, naphthalene did not give evidence of mutagenicity.

Based on the nature and limitations of the carcinogenicity data, the Agency has concluded that there is inadequate evidence to evaluate the carcinogenic potential of naphthalene. Accordingly, naphthalene is classified as a Group D compound (not classifiable as to human carcinogenicity) using the EPA weight-of-evidence criteria for carcinogenicity (U.S. EPA, 1986b).

Noncancer Health Effects

The data base concerning naphthalene exposure of humans via ambient air associated health effects is virtually nonexistent. Human data consist primarily of occupational case reports and accidental overexposure by inhalation or ingestion. Inhalation of naphthalene has been reported to cause headaches, loss of appetite and nausea. Concentrations of naphthalene in excess of about 75 mg/m^3 can cause irritation of the eyes. Dermatitis can result from direct contact with naphthalene. In instances of overexposure, acute hemolytic anemia has been a frequent finding and fatalities have been reported. Groups of individuals shown to be especially susceptible to naphthalene-induced hemolytic anemia include neonates, persons whose erythrocytes are deficient in glucose 6-phosphate dehydrogenase, and persons in whom erythrocyte glutathione is rapidly depleted by certain oxidant

chemicals. There is suggestive evidence that overexposure is associated with cataract formation.

Information on the effects of acute, subchronic and chronic exposure of laboratory animals to naphthalene is also limited, particularly with regard to inhalation exposures. The acute oral LD_{50} values (i.e., dose that is lethal to 50% of the animals) for mice and rats indicate that the toxicity of naphthalene is relatively low. For mice, LD_{50} values are in the range of 500 to 700 mg/kg, while for rats, the range is 2200 to 2400 mg/kg. Inhalation LC_{50} values have not been determined. One study indicates that mortality in mice does not occur during a 4-hour exposure level of 90 ppm (470 mg/m³. However, at this level lung lesions are prominent. Rabbits appear to be less sensitive than rats or mice following acute exposures.

Two principal target tissues have been identified in animals: Nonciliated bronchiolar epithelial cells (Clara cells) and eye tissue. In mice, exposure to naphthalene (intraperitoneal) results in a dose-dependent necrosis of Clara cells in the lungs. The extent and severity of this lesion appears to correlate with the degree of binding of reactive metabolites of naphthalene in the lung. The nature of the reactive metabolite(s) and its source (whether the Clara cell or liver) have not been identified. Naphthalene-induced pulmonary damage has not been observed in rats and hamsters. Naphthalene has been shown to produce cataracts in rats and rabbits following oral administraiton. Cataract formation, as well as hepatic and renal necrosis, was not observed in mice following subchronic oral administration of naphthalene.

Only limited testing for reproductive effects has been accomplished. In these studies, oral and intraperitoneal exposure to naphthalene did not result in any gross congenital abnormalities. One report, however, assocated ingestion of naphthalene in drinking water with suppressed spermatogenesis and poor progeny development in laboratory animals.

Monitored Ambient Concentrations

Few ambient air monitoring data for naphthalene are available. In one study, quarterly naphthalene concentrations were determined in 13 cities across the United States (Hunt et al., 1984). The range of reported quarterly means for naphthalene was from none detected to 0.012 mg/m³. Other monitoring data showed ambient naphthalene concentrations of 3.5×10^{-7} mg/m³ in an urban area and 5.0×10^{-8} mg/m³ in a rural area (U.S. EPA, 1982).

Exposure Estimation

The exposure assessment relied primarily upon modeling to estimate naphthalene concentrations close to emission sources. In order to assess the potential for adverse noncancer health effects from short-term exposure to naphthalene, a conservative screening modeling analysis was performed (U.S. EPA, 1985). The model employs a point source Gaussian air dispersion model and applies several reasonable worst-case assumptions for source location, emissions, meteorology and terrain. Although the short-term screening model is designed to produce conservative estimates of ambient concentrations by using several reasonable worst-case assumptions, the emission rates used in this analysis are derived from estimates of annual releases and may not be representative of accidental or intermittent emissions. For this assessment, the largest emitting sources were selected and the maximum levels of naphthalene that could occur near each plant were calculated. Maximum concentrations of 4.6 and 2.6 mg/m³ were estimated for averaging times of 15 minutes and 8 hours, respectively (U.S. EPA, 1987b).

Estimates of long-term human exposure to atmospheric naphthalene emitted from all facilities within each source category identified in EPA's source assessment for naphthalene (U.S. EPA, 1986a) were calculated using the Human Exposure Model (HEM) (U.S. EPA, 1986c). The HEM estimated concentrations to which populations living within 50 kilometers of specific sources may be exposed. The results of this modeling analysis indicated a maximum annual naphthalene concentration of 0.033 mg/m³ (U.S. EPA, 1988a).

Risk Characterization

Maximum modeled short-term concentrations (4.6 and 2.6 mg/m³ for 15 minutes and 8 hours, respectively) are greater than one order of magnitude below levels asociated with eye irritation (greater than 75 mg/m³), which is the most sensitive health endpoint for which quantitative information is available. Information from occupational case reports, accidental over-exposures in humans and acute exposure studies in animals suggests that adverse health effects more serious than eye irritation would be expected at exposure levels much higher than the modeled concentrations. There is no information which suggests that exposure to the maximum modeled average long-term concentration (0.033 mg/m³) causes adverse human health effects.

Existing Regulations and Guidelines

The National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration and the American Conference of Governmental Industrial Hygienists (ACGIH) have adopted regulations or have made recommendations for an 8-hour time-weighted average (TWA) level of 50 mg/m³. This is the concentration to which nearly all workers may be exposed for 8 hours per day, 40 hours per week, week after week, without adverse effect. The TWA for naphthalene is based on the observation that eye irritation is experienced at levels above 75 mg/m³, and that more serious eye effects can result from continued exposure. The ACGIH also recommends a 15-minute short-term exposure limit (STEL) of 75 mg/m³ to prevent ocular effects (ACGIH, 1986). A STEL is defined as a 15-minute time-weighted average exposure which should not be exceeded at any time during a work day even if the 8-hour time-weighted average is within the threshold limit value.

Naphthalene is regulated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). Under RCRA, naphthalene as a commercial chemical product, manufacturing chemical intermediate or off-specification chemical product is considered by EPA to be a hazardous waste under certain conditions as defined by 40 CFR Part 261. Such hazardous wastes must be managed in accordance with requirements adopted by EPA or States as described in 40 CFR Parts 260–271.

Naphthalene is currently listed as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under section 101(14) of CERCLA, reportable quantities are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, the RCRA, the CAA (section 112) and the Toxic Substances Control Act (50 FR 12346–13522, April 4, 1985). Section 103(a) of the CERCLA requires any release of naphthalene to the environment (including the air) that is equal to or greater than 100 pounds in any 24-hour period must be reported immediately to the National Response Center (telephone 800–424–8802 or 202–426–2675 for the Washington, DC metropolitan area) (U.S. EPA, 1987c).

Naphthalene is also subject to the reporting requirements of the Toxic Chemical Release Reporting, Community Right-to-Know rule (U.S. EPA, 1988b), under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. Section 313 requires that owners and operators of certain facilities that manufacture, import, process, or otherwise use certain toxic chemicals report annually their releases of those chemicals to each environmental medium. In addition, certain suppliers of toxic chemicals must notify recipients of such chemicals in mixtures and trade name products.

Conclusions

The Agency concludes that the currently available data are insufficient to indicate health concerns that warrant specific Federal regulation of routine naphthalene emissions under the CAA at this time. A number of uncertainties, however, are associated with this conclusion. With regard to the health assessment, the health data are inadequate to judge naphthalene's carcinogenic potential in humans. Furthermore, there are virtually no dose-response data for noncancer health effects in humans, and the available inhalation data from animals are minimal. Regarding the exposure assessment, EPA's techniques for estimating short-term and long-term concentrations resulting from routine emissions are based on screening models rather than on extensive site-specific modeling. The concentrations estimated from the short-term modeling exercise do not account for emissions resulting from accidental releases or intermittent or batch operations, thus providing a potential for underestimation of short-term concentrations. In addition, the few available ambient monitoring data for naphthalene are of limited usefulness in the exposure assessment.

Although EPA considers today's action appropriate in view of the current health and exposure information, the Agency will continue to monitor new data as they become available. Results of the NTP chronic inhalation bioassay, which are expected to be published in approximately one year, may significantly improve the data base on the potential carcinogenicity of naphthalene. In addition, the Agency has recently added naphthalene to the list of substances in the Health and Safety Data Reporting Rule, 40 CFR Part 716 (U.S. EPA, 1987d). This listing requires past, current and prospective manufacturers, importers, and processors of these substances to provide EPA with lists and copies of unpublished health and safety studies on these substances. Various program offices within EPA will use this information to support a more detailed assessment of the health and environmental risks of these substances.

The EPA invites comments and submission of information pertinent to the determination made today. A further notice will be published if public comments or other additional information suggest a need to reevaluate today's findings and revise EPA's conclusions.

Date: March 14, 1988.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

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[FR Doc. 6112 Filed 3–18–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–813–DR]

Major Disaster and Related Determinations; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–813–DR), dated March 11, 1988, and related determinations.

DATED: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice

Notice is hereby given that, in a letter dated March 11, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a fire which occurred on February 10, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288. I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

To the extent authorized by law, Federal assistance pursuant to this major disaster declaration will be provided by the Department of Education.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

North Slope Borough for assistance under the programs of the Department of Education for the Early Childhood Education Center and Kindergarten.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88–6068 Filed 3–18–88; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011178.

Title: APL/Waterman Cooperative Agreement for Charter of S.S. President Taylor.

Parties: American President Lines, Ltd., Waterman Steamship Corporation ("Waterman").

Synopsis: Under the terms of the proposed agreement the parties would share, on a limited basis, in the profits and losses on voyages of the S.S. President Taylor, to be operated by Waterman under a chartering arrangement in the trade between U.S. Atlantic and Gulf ports and ports in the Red Sea, Arabian Gulf, India, Pakistan, Bangladesh, Sri Lanka, Burma, Mediterranean Egypt, Indonesia, Malaysia and Singapore. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 15, 1988.

[FR Doc. 88–6120 Filed 3–18–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

A. W. Bailey, Jr.; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *A. W. Bailey, Jr.*, to acquire 4.12 percent; F. Herman Coleman, to acquire 8.5 percent; Donna M. Howell, to acquire 2.65 percent; J. Rodney Lee, to acquire 3.46 percent; Rodney T. Gray, to acquire 5.2 percent; Tommy G. Salome, to acquire 3.25 percent; Donal S. Sharp, to acquire 2.32 percent; Rodney G. Kroll, to acquire 1.47 percent; Fred J. Schultz, to acquire 1.0 percent; Ned Snyder III, to acquire 2.0 percent; Paul H. Hubbard, to acquire 3.19 pecent; Dietz Memorial, Inc., to acquire 2.0 pecent; O'Flaherty Holdings, Inc., to acquire 4.0 percent; and Kenneth L. Burgess, Jr., to acquire 0.27 percent of the voting shares of Central Texas Bancorp, Inc., Waco, Texas, and thereby indirectly acquire Texas National Bank in Waco. All of the notificants reside in Waco, Texas.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–6054 Filed 3–18–88; 8:45 am]

BILLING CODE 6210–01–M

CNBC Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the Offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNBC Bancorp, Inc.* Chicago, Illinois; to engage *de novo* through its subsidiary, CNBC Development Corporation, Chicago, Illinois, in making and servicing loans or other extensions of credit such as would be made by a commercial finance company pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

2. *Midwest Financial Group*, Peoria, Illinois; to engage *de novo* through its subsidiary, Midwest Financial Mortgage Banking Company, Peoria, Illinois, in marketing and servicing loans secured by real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by April 13, 1988.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6055 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

Larry Collins; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Larry Collins*, Portland, Tennessee; to acquire 28.3 percent of the voting shares of BOC Bancorp, Inc., Woodbury, Tennessee, and thereby indirectly acquire Bank of Commerce, Woodbury, Tennessee.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6056 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

Home Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 8, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Home Bancorp, Inc.*, Brooklyn, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Home Savings Bank, Brooklyn, New York.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Ballston Bancorp, Inc.*, Arlington, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Northern Virginia, Arlington, Virginia, a *de novo* bank.

2. *First United Bancorporation*, Anderson, South Carolina; to acquire 100 percent of the voting shares Spartanburg National Bank, Spartanburg, South Carolina, a *de novo* bank.

3. *Key Centurion Bancshares, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of The National Bank of Commerce of Williamson, Williamson, West Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First State Corporation*, Waynesboro, Mississippi; to acquire 24.9 percent of the voting shares of First National Bank of Lucedale, Lucedale, Mississippi.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Affiliated Bancorp, Inc.*, Watseka, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Watseka First National Bank, Watseka, Illinois.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Alma Bancshares, Inc.*, Alma, Kansas; to become a bank holding company by acquiring 81.6 percent of the voting shares of The First National Bank of Alma, Alma, Kansas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bank of Seoul*, Seoul, Korea; to become a bank holding company by acquiring 100 percent of the voting shares of Seoul Bank of California, Los Angeles, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6057 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

Midland Bank, PLC; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (21 CFR 225.21(a)) to aquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities

will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested pesons may express their views in writing on the question whether consummation of the proposal can "reasonably be excepted to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Midland Bank, PLC,* London, England; to engage *de novo* through its subsidiary, Thomas Cook, Inc., Princeton, New Jersey, in the purchase and sale of foreign currency as approved by Board order. *Southern Bancorporation Inc.,* 69 *Fed. Res. Bull.* 224 (1983).

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6058 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Management and Budget; Model Framework for Management Control Over Automated Information Systems, January 1988

SUMMARY: In a January 15, 1988 memorandum, M-88-10, the Deputy Director of the Office of Management and Budget, Joseph R. Wright issued an important document for managers and others working with automated information systems. The complete text of Mr. Wright's memorandum is repeated here:

Memorandum for the Heads of Departments and Agencies

From: Joseph R. Wright, Jr., Deputy Director

Subject: Model Framework for Management Control Over Automated Information Systems

I am pleased to provide you with the attached document entitled *Model Framework for Management Control Over Automated Information Systems.* This document is the product of a joint undertaking by the President's Council on Management Improvement and the President's Council on Integrity and Efficiency to help Federal managers better understand, establish, and document internal controls for their systems. I am initiating actions to institutionalize a program to facilitate the type of coordinated and integrated thinking provided in the document.

I believe the document can be useful guidance to Federal managers in better understanding certain requirements for control imposed by the Federal Manager's Financial Integrity Act of 1982, the Privacy Act of 1974, and OMB Circular Nos. A-123, A-127, and A-130. The document provides an integrated view of these requirements and adds nothing new. Thus, it will be an important tool for orienting Federal managers in the effective and responsible use of modern information technologies to support their programs.

The *Model Framework* was the product of many months of coordination across Federal agencies. It was clear from the 41 responses submitted on the February 1987 draft of the document from 27 agencies, that there is a need for this (or similar) methodology. Reviewers' comments provided the basis for the revision of the draft and recommendations for further work, which were presented to the President's Councils on Management and Improvement, and Integrity and Efficiency last fall.

The finalized *Model Framework* has been distributed to affected Committee Chairpersons and Members of the U.S. Senate and House of Representatives, Department and Agency Heads and Senior Information Resources Management (IRM) officials, and principals on the Interagency Committee on officials, and principals on the Interagency Committee on IRM sponsored by the General Services Administration.

Ordering Information

The document has been formally distributed to the Heads of Departments and Agencies, and single copies can be obtained from the contact identified below while supplies last. Additional copies of the document may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. GPO Stock Number is 017-000-00255-4; unit price is $3.50.

FOR FURTHER INFORMATION CONTACT: Wallace O. Keene, Deputy Director, Office of Finance, HHS, 200 Independence Avenue SW., Room 737H, Washington, DC 20201. Telephone: (202) 245-7084.

Dated: March 15, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88-6123 Filed 3-18-88; 8:45 am]

BILLING CODE 4150-04-M

Office of the Assistant Secretary for Health

Advisory Council on Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of April 1988:

Name: National Advisory Council on Health Care Technology Assessment (Medicare Coverage Process Subcommittee).

Date and Time: April 19, 1988—8:30 a.m. to 4:00 p.m.

Place: Dupont Plaza Hotel, Embassy A Room, 1500 New Hampshire Avenue, Northwest, Washington, DC.

Open for entirety of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The meeting will be devoted to discussions of a draft report of the findings, conclusions, and possible recommendations resulting from the Subcommittee's study of the technology assessment and Medicare coverage processes. The draft report will address timing of assessments, the internal HCFA review process, and the OHTA assessment process.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Kelly Fennington, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–5650.

Agenda items are subject to change as priorities dictate.

Date: March 11, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Service Research and Health Care Technolgy Assessment.

[FR Doc. 88–6066 Filed 3–18–88; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Control; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 for Project Grants for Sexually Transmitted Diseases (STD) Control programs.

Authority

This grant program is authorized under the Public Health Service Act, Section 318 (42 U.S.C. 247c), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and D. The Catalog of Federal Domestic Assistance Number is 13.977.

Eligible Applicants

Eligible applicants are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, and the Republic of Palau.

Purpose

The purpose of this grant program is to reduce morbidity and mortality from STD by preventing cases and complications.

Availability of Funds

Approximately $48,500,000 will be available to award up to 65 grants. The average award is expected to be $745,000, with individual awards ranging from $15,000 to $3,000,000. Depending on the availability of funds, grants are usually funded in 12 month budget periods in a 3 to 5 year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. No new grants are expected to be made in 1988 since current grantees are coordinating activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

Information

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Application forms, information on review procedures, deadlines and the consequences of late submission, copies of the program announcement and regulations may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: March 14, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264–2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3512–35 Market Street, Mailing Address: P.O. Box 12716, Philadelphia, Pennsylvania 19101, (215) 596–6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 221–2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353–1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 426–3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844–6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 88–6069 Filed 3–18–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88F–0054]

Shell Oil Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Shell Oil Co. has filed a petition proposing that the food additive regulations be amended to permit the use of hydrogen peroxide solution to sterilize food-contact surfaces prepared from poly-1-butene resins and butene/ethylene copolymers.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4062) has been filed by Shell Oil Co., Houston, TX 77210, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide solution to sterilize food-contact surfaces prepared from poly-1-butene resisns and butene/ethylene copolymers complying with § 177.1570.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 14, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–6061 Filed 3–18–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings; Blood Products Advisory Committee; et al.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and places. April 7 and 8, 1988, 8:30 a.m., April 7, 1988, Wilson Hall, 3rd Floor, Bldg. 1; and April 8, 1988, Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 7, 1988, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 12:30 p.m.; open committee discussion, 1:30 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5:30 p.m.; open committee discussion, April 8, 1988, 8 a.m. to 5 p.m.; Linda Smallwood, Division of Blood and Blood Products (HFB–830), Office of Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike Bethedsa, MD 20892, 301–497–0393

General function of the committee. The committee reviews and evaluates available data on the safety effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committed should communicate with the committee contact person.

Open committee discussion. On the morning of April 17, 1988, the committee will discuss a medical device premarket approval application for a test for hepatitis B core antibody (DuPont), and in the afternoon will hear an update on human immunodeficiency virus (HIV) testing issues. On April 8, 1988, the committeee will participate in the Public Workshop on "the Application of Biosafety Principles in Blood Establishments".

Closed presentation of data. The committee will discuss trade secret or confidential commercial information relevant to the DuPont medical device premarket approval application for the anti-hepatitis B core antigen test. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to the pending medical device premarket application, investigational new biological product applications, and biological product license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(b)(c)(4)).

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. April 7 and 8, 1988, 9 a.m., Bldg. 13, Conference Room, National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open committee discussion, April 7, 1988, 9 a.m. to 5 p.m.; open committee discussion, April 8, 1988, 9 a.m. to 10 a.m.; closed committee discussion, 10 a.m. to 12:30 p.m. and 2 p.m. to 3 p.m.; Ronald F. Coene, National Center for Toxicological Research, Food and Drug Administration, 5600 Fishers Lane, Rm. 14–101, Rockville, MD 20857, 301–443–3155.

General function of the board. The board advises the Director, National Center for Toxicological Research (NCTR), in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The board provides that extra-agency review in ensuring that research programs at NCRT are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the board contact person before April 1, 1988, and submit a brief statement of the general nature of the evidence or argument they wish to present, the name and address of proposed participants, and an indication of the approximate time requested to make their comments.

Open board discussion. The board will receive an update of NCTR's progress on the "Project on Caloric Restriction." A final agenda will be available on March 29, 1988, by communicating with the board contact person.

Closed board deliberations. The board will review the projects and progress of NCTR's post-doctoral fellowship programs. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with these programs, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Ophthalmic Devices Panel

Date, time, and place. April 21 and 22, 1988, 9 a.m., Auditorium Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing April 21, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, April 22, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Dr. Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

General function of committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety, effectiveness, and suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact persons before April 2, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 21, 1988, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for Nd:YAG lasers and intraocular lenses (IOL's), and may discuss specific PMA's for these devices. It discussion of all pertinent Nd:YAG laser or IOL issues is not completed, discussion will be continued the following day. On April 22, 1988, the committee will discuss PMA's for

contact lenses and other devices, and requirements for PMA approval.

Closed committee deliberation. On April 21, and 22, 1988, the committee may discuss trade secret and/or confidential commercial or financial information relevent to PMA's for IOL's Nd:YAG lasers, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. April 29, 1988, 8:30 a.m., Rm. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Dr. Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 15, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a prosthetic heart valve and have a discussion of Panel evaluation of PTCA (percutaneous transluminal coronary angioplasty) catheters.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are limited above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contract person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Laine, Rockville, MD 20857, aproximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files complied for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or

devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory commitee.

Dated: March 15, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–6060 Filed 3–18–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meetings; Veterinary Medicine Advisory Committee et al.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Veterinary Medicine Advisory Committee

Date, time, and place. April 12 and 13, 1988, 8:15 a.m., Conference Rm. I, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, April 12, 1988, 8:15 a.m. to 8:45 a.m.; open public hearing, 8:45 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 4:30 p.m.; open committee discussion, April 13, 1988, 8 a.m. to 8:15 a.m.; open public hearing, 8:15 a.m. to 8:45 a.m.; open committee discussion, 8:45 a.m. to 11:30 a.m.; Max Crandall, Center for Veterinary Medicine (HFV–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3450.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Criteria for classification of prescription and over-the-counter products, (2) sulfamethazine residues, and (3) CVM new research programs.

Oncologic Drugs Advisory Committee

Date, time, and place. April 19, 1988, 8:30 a.m., Parklawn Bldg., Conference Rms. G and H, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; David F. Hersey, Center for Drug Evaluation and Research, Rm. 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should comunicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Ifosfamide (NDA 19763) for use in combination with approved cytotoxic drugs for treatment of refractory testicular cancer; (2) FDA requirements for approval of new drugs for treatment of colon cancer and rectal cancer; (3) treatment of advanced metastatic colorectal cancer; (4) leucovorin and fluorouracil for advanced metastatic colon cancer; and (5) adjuvant therapy of rectal cancer.

Dermatologic Drugs Advisory Committee

Date, time, and place. April 26, 1988, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research, Rm. 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Adverse effects of isotretinoin (Accutane/ Hoffmann-LaRoche, Inc.); and (2) an update on evaluation patch test kits.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. April 28 and 29, 1988, 8:30 a.m., Conference Rm. 10, 6th floor, Bldg. 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 28, 1988, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, April 29, 1988, 8:30 a.m. to 2:30 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research, Rm. 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergenic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On April 28, 1988, the committee will discuss: (1) The new drug evaluation review process, (2) the use of caffeine for apnea of prematurity, and (3) data supporting pediatric use of inhaled albuterol. On April 29, the committee will discuss the guidelines for testing bronchodilators.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of

data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 14, 1988.

Adam J. Trujillo,

Acting Commissioner for Regulatory Affairs.

[FR Doc. 88-6059 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Public Health Service, Final Funding Priority for Grants for Programs for Physician Assistants

The Health Resources and Services Administration announces the final funding priority which will be applied in the distribution of grant awards in Fiscal Year 1988 for Grants for Programs for Physician Assistants.

Section 783(a) authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act.

To receive support, programs must meet the requirements of sections 701(8) and 783(a) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts H and I.

In determining the priority for funding of applications recommended for approval, consideration will be given to the following factors:

1. The extent to which the applicant develops and uses methods designed to attract, maintain and graduate minority and disadvantaged students;

2. Conducting substantial portions of the programs in a health manpower shortage area(s) or in an area health education center, funded under section 781 of the PHS Act;

3. Establishment of a program in a State which does not have a program; and

4. Conducting a program in conjunction with primary care physician education in a manner which shares educational resources and encourages the use of physician assistants by physicians.

In addition, a proposed funding priority was published in the **Federal Register** of January 5, 1988 (53 FR 184) for public comment. No comments were received during the 30-day comment period.

Therefore, as proposed, a funding priority will be given to projects which expand or develop and implement new curriculum concerning the prevention of HIV-infection and the care of HIV-infected persons, including AIDS patients.

Physician Assistants are increasingly required to provide a wide range of services to HIV-infected persons, including AIDS patients, in both inpatient and outpatient settings. However, organized formal curricular offerings for these trainees are not in place. This priority is designed to encourage new offerings.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: March 15, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-6110 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Cancer Biology-Immunology Contract Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, April 25, 1988, 9000 Rockville Pike, Building 31C, Conference Room 8, Bethesda, Maryland 20892.

This meeting will be open to the public on April 25 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L.

92–463, the meeting will be closed to the public on April 25 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496–7153) will furnish substantive program information.

Dated: March 10, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6118 Filed 3–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Vision Research Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, March 24–25, 1988, Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on March 24 from 8:30 a.m. to 9:30 p.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on March 24 until recess and on March 25 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building, 31, Room 6A/51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.)

Dated: March 10, 1988.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 88–6119 Filed 3–18–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

White Earth Reservation Land Settlement Act of 1985; Ratification of Questionable Land Transfers

December 4, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Certification.

SUMMARY: This certifies that all three of the conditions enumerated in section 10(a) of the White Earth Reservation Land Settlement Act of 1985, Pub. L. 99–264, have been satisfied. This certification is required by section 6(a) of the Act.

FOR FURTHER INFORMATION CONTACT: White Earth Project Director, Bureau of Indian Affairs, c/o Minnesota Agency, Route 3, Box 112, Cass Lake, Minnesota 56633, Telephone: (218) 335–6913, Ext. 454.

SUPPLEMENTARY INFORMATION: Sections 4(a) and 4(b) of the White Earth Reservation Land Settlement Act of 1985, Pub. L. 99–264, define circumstances by which the title to an allotment of land, or interest therein, may have been lost through a questionable tax forfeiture, sale, mortgage, or other conveyance during the trust period. For each allotment or interest which falls within the scope of sections 4(a) and 4(b) of the Act, settlement compensation will be paid to the individuals determined to be entitled thereto. In addition, section 5(c) of the Act describes allotments of land which were granted to individuals who died prior to the selection dates thereof, and provides that the White Earth Band of Chippewa Indians shall be compensated for such allotments.

The three conditions set forth in section 10(a) of the Act have now been satisfied, to wit: (1) The Department of the Interior and the State of Minnesota have agreed upon the transfer of 10,000 acres from the State to the United States, to be held in trust for the White Earth Band of Chippewa Indians, (2) the State has appropriated $500,000 for technical and computer assistance in implementing the Act, and (3) the United States has appropriated $6.6 million for economic development for the benefit of the White Earth Band of Chippewa Indians. Pursuant to sections 6(a) and 6(c) of the Act, respectively, this certification will operate to: (1) Retroactively ratify questionable land transfers which fall within the scope of sections 4(a), 4(b), or 5(c); and (2) bar any subsequent suits to recover title, or damages, relating to transactions described in sections 4(a), 4(b), 5(a), or 5(c).

The questionable land transfers to be ratified hereby will be identified by separate publication in the **Federal Register.** On September 19, 1986, a list of 723 allotments and interests, which had been determined to fall within the scope of sections 4(a), 4(b), or 5(c) of the Act, was published in the **Federal Register** (51 FR 33348). Section 7(c) of the Act, as amended, requires that a supplemental list be published in the **Federal Register** by March 12, 1989.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 88–6246 Filed 3–18–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AZ–020–08–4212–13; A–23217]

Public Land Exchange; Mohave and Yavapai Counties, AZ

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of realty action; mineral exchange.

SUMMARY: The Federal mineral interests within the following described areas have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 16½ N., R. 9 W.,

Sec. 25.
T. 16 N., R. 9W.,
Secs. 1–4, 8–15, 17–31, and 33–35.
T. 15 N., R. 6 W.,
Secs. 30 and 31.
T. 15 N., R. 7 W.,
Secs. 5, 17, 20–22, 27–31, 33, and 34.
T. 15 N., R. 8 W.,
Secs. 12, 14, 21–28, 33, and 35.
T. 15 N., R. 9 W.,
Secs. 3–11, 17, 18, and 22–24.
T. 14½ N., R. 6.,
Sec. 21.
T. 14½ N., R. 8 W.,
Secs. 26–29.
T. 14 N., R. 4 W.,
Secs. 3, 10, 11, 15, 19, 22–26, 29, and 35.
T. 14 N., R. 5 W.,
Secs. 27–31 and 33–35.
T. 14 N., R. 6 W.,
Secs. 4, 5, 9, and 24.
T. 14 N., R. 9 W.,
Secs. 7, 10, 18–21, 25–29, and 33–35.
T. 13 N., R. 4 W.,
Secs. 5, 6, 11, 14, and 23.
T. 13 N., R. 5 W.,
Secs. 1, 3, 4, 7, 10–15, 23, and 24.
T. 13 N., R. 6 W.,
Sec. 5.
T. 13 n., R. 7 W.,
Secs. 22, 23, 25, and 26.
T. 13 N., R. 8 W.,
Secs. 12–14, 23, 24, 26, 31, and 35.
T. 13 N., . 9 W.,
Secs. 3, 4, 9, 17–21, and 28–30.
T. 12 N., R. 5 W.,
Secs. 27, 28, 33, and 36.
T. 12 N., R. 6 W.,
Secs. 1–13, 18, 19, and 30.
T. 12 N., R. 6 W.,
Secs. 12–14, 21–28, and 33–35.
T. 12 N., R. 8 W.,
Secs. 3–6, 8–12, 17–20, and 29–31.
T. 12 N., R. 9 W.,
Secs. 4, 9–14, and 23–25.
T. 11 N., R. 5 W.,
Secs. 5–8, 17–21, 28–31, and 34.
T. 11 N., R. 6 W.,
Secs. 1, 3, 4, 9–15, 22–27, 30, and 31.
T. 11, N., R. 7 W.,
Secs. 3–5, 7, 8, 11, 13, 17–21, 23, 27, and 34.
T. 11 N., R. 8 W.,
Secs. 1, 3–5, 9–15, 22–26, and 35.
T. 10 N., R. 6 W.,
Secs. 4–9, 13, 17–21, 25, and 26.
T. 10, N., R. 7 W.,
Secs. 1, 3, 4, 9–14, 23–26, 33, and 35.
T. 10 N., R. 8 W.,
Secs. 2 and 11.
Containing 159, 155.58 acres, more or less.

In exchange for these interests, the United States will acquire the mineral interests owned by the Santa Fe Pacific Railroad Company within the following described areas:

Gila and Salt River Meridian, Arizona

Lake Havasu City Airport

T. 14 N., R. 20 W.,
Secs. 9.
Containing 640.00 acres, more or less.

Havasu National Wildlife Refuge

T. 17 N., R. 21 W.,
Secs. 21 and 27.
T. 16 N., R. 20 W.,
Sec. 31.
T. 16 N., R. 20½ W.,
Sec. 35.
T. 16 N., R. 21 W.,
Secs. 3 and 35.
T. 15 N., R. 20 W.,
Secs. 7, 19, and 31.
T. 15 N., R. 20½ W.,
Secs. 1, 3, 11, 13, 23, 25, and 35.
T. 15 N., R. 21 W.,
Secs. 1, 3, and 13.
T. 14 N., R. 20½ W.,
Sec. 1.
T. 11 N., R. 17 W.,
Secs. 19, 21, 25, 27, 29, 33, and 35.
T. 11 N., R. 18 W.,
Secs. 11 and 13.
Containing 9,227.63 acres, more or less.

Grand Canyon National Park

T. 31 N., R. 11 W.,
Secs. 17, 21, 25, 29, 31, 33, 35.
T. 31 N., R. 12 W.,
Secs. 9, 15, 17, 19, 23, 25, and 35.
T. 31 N., R. 13 W.,
Secs. 1, 5, 7, and 25.
T. 31 N., R. 15 W.,
Secs. 31 and 33.
T. 30 N., R. 11 W.,
Secs. 9, 11, 23, and 27.
T. 30 N., R. 15 W.,
Secs. 5, 7, 9, 17, 19, and 21.
T. 30 N., R. 16 W.,
Secs. 11 and 13.
T. 29 N., R. 11 W.,
Secs. 5, 9, 13, 15, 23, and 25.
Containing 21,085.30 acres, more or less.

Mount Tipton Wilderness Study Area

T. 26 N., R. 18 W.,
Sec. 33.
T. 25 N., R. 17 W.,
Sec. 31.
T. 25 N., R. 18 W.,
Secs. 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 25, 27, 29, 31, 33, and 35.
T. 24 N., R. 18 W.,
Secs. 5, 7, and 9.
Containing 13,340.60 acres, more or less.

Mount Nutt Wilderness Study Area

T. 20 N., R. 20 W.,
Secs. 11, 13, 23, 25, 27, and 35.
T. 19 N., R. 20 W.,
Sec. 1.
Containing 3,845.20 acres, more or less.

Warm Springs Wilderness Study Area

T. 18 N., R. 20 W.,
Secs. 25, 33, and 35.
T. 17 N., R. 20 W.,
Secs. 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 25, 27, 33, and 35.
T. 16½ N., R. 19 W.,
Secs. 21, 23, 27, and 33.
Containing 13,532.06 acres, more or less.

Wabayuma Peak Wilderness Study Area

T. 19 N., R. 16 W.,
Secs. 9, 17, 19, 21, 25, 27, 29, 31, 33, and 35.
T. 19 N., R. 17 W.,
Secs. 13, 23, 25, 27, and 35.
T. 18 N., R. 16 W.,
Secs. 1, 3, 5, 7, 9, 11, 15, 17, 19, 21, 23, 27, 29, 31, and 33.
T. 18 N., R. 17 W.,
Secs. 1, 3, 13, 23, and 25.
T. 17 N., R. 16 W.,
Sec. 5.
Containing 21,988.68 acres, more or less.

Aubrey Peak Wilderness Study Area

T. 13 N., R. 14 W.,
Sec. 31.
T. 13 N., R. 15 W.,
Secs. 27, 33, and 35.
T. 12 N., R. 14 W.,
Secs. 5 and 7.
T. 12 N., R. 15 W.,
Secs. 1, 3, 5, 7, 9, 11, 15, 17, 21, 23, 27, and 29.
Containing 10,458.40 acres, more or less.

Black Mesa Wilderness Study Area

T. 13 N., R. 14 W.,
Secs. 27, 33, and 35.
T. 12 N., R. 13 W.,
Secs. 7, 17, 19, 21, and 29.
T. 12 N., R. 14 W.,
Secs. 1, 3, 9, 11, 15, 23, 25, 27, and 35.
Containing 10,298.47 acres, more or less.

Arrastra Mountain Wilderness Study Area

T. 13 N., R. 12 W.,
Secs. 17, 19, 29, and 31.
T. 13 N., R. 13 W.,
Secs. 11, 13, 15, 23, 25, 33, and 35.
T. 12 N., R. 13 W.,
Secs. 5, 9, 17, and 21.
Containing 8,801.00 acres, more or less.

Lower Burro Creek Wilderness Study Area

T. 15 N., R. 12 W.,
Sec. 35.
T. 14 N., R. 12 W.,
Secs. 1 and 11.
Containing 1,879.08 acres, more or less.

Crossman Peak Wilderness Study Area

T. 15 N., R. 18 W.,
Secs. 29, 31, and 33.
T. 14 N., R. 18 W.,
Secs. 25, 31, 33, and 35.
T. 14 N., R. 19 W.,
Secs. 3, 5, and 7.
Containing 5,742.30 acres, more or less.

Gibralter Mountain Wilderness Study Area

T. 11 N., R. 18 W.,
Sec. 35.
T. 10 N., R. 17 W.,
Secs. 19 and 31.
T. 10 N., R. 18 W.,
Secs. 3, 9, 11, 13, 15, 23, 25, 27, 33, and 35.
Containing 7,909.00 acres, more or less.

Planet Peak Wilderness Study Area

T. 10 N., R. 17W.,
Secs. 13, 21, 23, 25, 27, 29, 33, and 35.
Containing 5,040.00 acres, more or less.

Swansea Wilderness Study Area

T. 10 N., R. 15 W.,
Secs. 5, 7, and 9.
T. 10 N., R. 16 W.,
Secs. 1, 3, and 11.
T. 11 N., R. 15W.,

Secs. 17, 19, 21, 29, and 31.
T. 11 N., R. 16 W.,
Sec. 25.

Containing 7,015.74 acres, more or less.
Total Santa Fe Pacific Railroad mineral interest being 140,803.46 acres, more or less.

The purpose of this exchange is to eliminate split estate by disposing of unclaimed Federal mineral interests beneath State surface and acquiring private mineral interests beneath Federal surface.

Publication of this Notice will segregate the Federal mineral interests from operation of the mining laws and mineral leasing laws. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,

District Manager.

Date: March 15, 1988.

[FR Doc. 88-6071 Filed 3-18-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-08-4220-10; Sacramento 054898]

California; Partial Termination and Reservation of Land; Correction

March 4, 1988.

In notice document 88-4056 beginning on page 5654 in the issue of February 25, 1988, make the following correction:

On page 5654 in the second column, 14th line from the bottom, "March 28, 1988" is hereby corrected to read "February 25, 1988".

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-5328 Filed 3-18-88; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calendar Year 1986

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1986 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued the 1986 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1986, and was submitted to the Congress on February 17, 1988. By this notice, the public is informed that the report is available and that interested individuals may obtain a copy by written request to the Service.

ADDRESS: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, 202-632-2202.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species (specifically the West Indian manatee and the sea otter in California), law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: March 7, 1988.

Frank Dunkle,

Director.

[FR Doc. 88-6053 Filed 3-18-88; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Micro-Enterprise Advisory Committee Meeting; Change of Location

A Notice of Meeting of the Micro-Enterprise Advisory Committee was published on March 14, 1988 (53 FR 8288). The site for the meeting has been changed from the Decatur Carriage House to the Key Bridge Marriot Hotel, 1401 Lee Highway, Arlington, VA. The date of the meeting, March 28, 1988, remains the same. For further information, contact Dr. Ross Bigelow at (703) 235-8964.

Michael Farbman,

A.I.D. Representative, Micro-Enterprise Advisory Committee.

Date: March 15, 1988.

[FR Doc. 88-6047 Filed 3-18-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Lodging a Complaint and Consent Decree Pursuant to the Clean Water Act; Biokyowa, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 9, 1988 a proposed Complaint and Consent Decree in *United States v. Biokyowa, Inc.*, Civil Action No. S88-0042-C, was lodged with the United States District Court for the Eastern District of Missouri.

The Complaint filed by the United States alleged that the defendants had violated section 301 of the Clean Water Act ("the Act"), and their National Pollutant Discharge Elimination System ("NPDES") permit, seeking an injunction and a civil penalty. The company owns and operates a pharmaceutical manufacturing plant which produces l-lysine, an animal feed supplement, as well as a wastewater treatment facility which is intended to treat a molasses-like effluent generated as a byproduct in the manufacturing process. Inspections of the facility have revealed continuing effluent limit violations. The proposed consent decree requires the defendants to pay a civil penalty of $170,000 and construct a pipeline to convey wastewater from its treatment system directly to the Mississippi River. The proposed decree also requires compliance with the Act and the NPDES permit by August 1, 1988.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent

Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Biokyowa, Inc.*, DOJ# Ref. 90–5–1–1–2870. The proposed Complaint and Consent Decree may be examined at the office of the United States Attorney, Eastern District of Missouri, U.S. Court & Custom House, 1114 Market Street, St. Louis, Missouri 63101. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Complaint and Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6051 Filed 3–18–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Order Pursuant to Clean Air Act; Borden, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Borden, Inc.*, Civil Action No. 83–982B, and *United States* v. *Borden, Inc. and Monochem, Inc.*, Civil Action No. 83–744B was lodged with the United States District Court for the Middle District of Louisiana on February 1, 1988. The proposed Consent Decree concerns the control and prevention of releases of vinyl chloride to the atmosphere from a vinyl chloride complex in Geismar, Louisiana, in complance with 40 CFR 61.60 *et seq.*

The decree provides that Borden, Inc. and Monochem, Inc. shall pay a civil penalty of $1,000,000.00, and shall pay $250,000.00 to the Louisiana State University Foundation to settle the United States' claims of releases of vinyl chloride in excess of 87,000 pounds to the atmosphere in violation of 40 CFR 61.60 *et seq.* The decree further provides that Borden Chemicals and Plastics Operating Limited Partnership, the current owner and operator of the Geismar facility, shall take corrective action at the facility to ensure against future releases of vinyl chloride. The corrective action includes addition and modernization of equipment to prevent releases of vinyl chloride during power failures or when there are malfunctions in the flare incineration system, as well as improved methods of monitoring and reporting releases. The scheduled completion date for all corrective actions is December 31, 1988.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Borden, Inc.* and *United States* v. *Borden, Inc. and Monochem, Inc.*, and D.J. reference # 90–5–2–1–604, 90–5–2–1–624 and 90–5–2–1–1170.

The proposed Consent Decree may be examined at the office of the United States Attorney, Second Floor, 352 Florida Street, Baton Rouge, Louisiana 70801, at the Region VI office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Environmental Enforcement Section, Land and Natural Resources Divisions of the Department of Justice, Room 1716, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00, payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88–6048 Filed 3–18–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; Ford Motor Co.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Unites States v. Ford Motor Company*, Civil Action No. 84–CV–4459–DT, was lodged with the United States District Court for the Eastern District of Michigan. The complaint filed by the United States alleged that the defendant violated Section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Michigan State Implementation Plan ("SIP") pertaining to the control of volatile organic compound ("VOC") emissions.

The proposed Decree establishes a deadline for achieving compliance with Michigan Air Pollution Control Commission Rule R.3336.1610 (that part of the Michigan SIP relating to VOC emissions from vinyl coating lines) by requiring Ford permanently to cease operating the violating vinyl coating lines.

In addition, the proposed Consent Decree requires defendant to pay a civil penalty of $1,750,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ford Motor Company*, and D.J. Reference No. 90–5–2–1–711.

The proposed Consent Decree may be examined at the office of the United States Attorney, U.S. Courthouse, 231 W. Lafayette Street, Detroit, Michigan 48226 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and National Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of th Department of Justice. In requesting a copy please enclose a check in the amount of $1.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6049 Filed 3–18–88; 8:45 am]

BILLING CODE 4410–01–M

Stipulation for Dismissal Pursuant to the Safe Drinking Water Act; Grace Petroleum Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Stipulation for Dismissal in *United States v. Grace Petroleum Corporation*, Civil Action No. CV–86–03–GF–PGH, was lodged with the United States District Court for the District of Montana, Great Falls Division, on March 10, 1988. The complaint in this action alleged that the defendant continued to operate a brine disposal injection well after it had lost authorization to do so in violation of the Safe Drinking Water Act, 42 U.S.C. 300h–2(b)(1) and the regulations

promulgated thereunder. By the Stipulation for Dismissal, the defendant agrees to pay the amount of $55,300 in settlement of this matter.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the Stipulation for Dismissal. Comments should be addressed to the Assistant Attorney General, Washington, DC 20530 and should refer to *United States v. Grace Petroleum Corporation*, D.J. Ref. No. 90–5–1–1–2383.

The Stipulation for Dismissal may be examined at the Office of the United States Attorney, District of Montana, 5043 Federal Building, 26th Street & 3rd Avenue, Billings, Montana 59103; at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and the Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

A copy of the Stipulation for Dismissal may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6050 Filed 3–18–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Sections 301 and 309 of the Clean Water Act in United States v. Winchester Municipal Utilities et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 22, 1988 a proposed Consent Decree in *United States v. Winchester Municipal Utilities*, Civil Action No. 84–289, was lodged with the United States District Court for the Eastern District of Kentucky. The original complaint in this Clean Water Act ("the Act") action was filed on August 31, 1984 against Winchester Municipal Utilities and the Commonwealth of Kentucky. The Commonwealth of Kentucky was joined as a defendant pursuant to section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e). The Complaint sought injunctive relief and civil penalties and alleged that defendant Winchester Municipal Utilities ("Winchester") violated the Clean Water Act, 33 U.S.C. 1251 *et seq.*, by discharging pollutants from its Strode's Creek Wastewater Treatment Plant in excess of effluent limitations contained in its National Pollutant Discharge Elimination System ("NPDES") permit. The Consent Decree requires that Winchester comply with the Clean Water Act and all the terms and conditions of its NPDES permit no later than March 31, 1991 and construct certain improvements at its sewage treatment plant. The Consent Decree provides for payment of a $10,000 civil penalty for past permit violations, establishes interim effluent limitations and monitoring requirements and imposes stipulated penalties for failure to comply with interim limits.

The Department of Justice will receive, for a period of thirty (30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assisitant Attorney General, Land and Natural Resources Division, U.S. Departament of Justice, Washington, DC 20530, and should refer to *United States v. Winchester Municipal Utilities*, D.J. Ref. No. 90–5–2–1–2134.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Kentucky, Fourth Floor, Federal Bldg., Limestone & Barr Streets, Lexington, Kentucky 40507. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th Street & Pennsylvania Avenue, NW. 20530. In requesting a copy, please enclose a check in the amount of $1.60 payable to the Treasurer of the United States for copying.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6052 Filed 3–18–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

NAHB Research Foundation; National Cooperative Research Act of 1984; Smart House Project

Notice is hereby given that, pursuanat to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 22, 1988 disclosing (1) the identities of two additional advisors to the Smart House Project, International Conference of Building Officials and Northern Illinois Gas, effective dates November 17, 1987, and October 27, 1987, respectively, and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of current parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following are current parties and have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies., Inc.
Bell Northern Research Ltd.
Bose Corporation
BRInTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Challenger Electrical Equipment Corp.
Dukane Corporation
E.I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer, Ltd.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
NOMA Incorporated
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company

Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
American Gas Association
Baltimore Gas & Elecric Company
Bell Canada
Bell Communications Research, Inc.
Bell South Services
The Bell Telephone Company of Pennsylvania
Boston Edison Company
Clark/Van Voorhis Architects, Inc.
Copper Development Association Inc.
The Dayton Power and Light Company
Delmarva Power and Light Company
Detroit Edison Company
Duke Power Company
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Hydor Quebec
Illinios Consolidated Telephone Co.
International Conference of Building Officials
National Association of Home Builders
National Cable Television Association
Northern Illinois Gas
Oklahoma Gas & Electric Company
Ontario Hydro
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwest Gas
Southwestern Bell Telephone Company
U.S. Dept. of Housing & Urban Dev.
U.S. West
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfuncations in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 25, 1986, July 30, 1986, December 16, 1986, April 3, 1987, June 30, 1987, August 25, 1987 and December 2, 1987, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), and on January 5, 1988 (53 FR 186), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–6109 Filed 3–18–88; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in King of Prussia, PA; Railroad Accident

In connection with its investigation of the collision of Amtrak Train 66, The Night Owl, with On-Track Maintenance-of-Way Equipment at Chester, Pennsylvania, January 29, 1988, the National Transportation Safety Board will convene a public hearing at 10:00 a.m. (local time), on April 27, 1988, at the Sheraton-Valley Forge Hotel, Grand Ballroom South, North Gulph Road and First Avenue, King of Prussia, Pennsylvania 19406. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382–6605.

Bea Hardesty,

Federal Register Liaison Officer.

March 16, 1988.

[FR Doc. 88–6132 Filed 3–18–88; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Low-Level Radioactive Waste Disposal Facility; Availability of Publications Concerning License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of two publications concerning license application for a Low-Level Radioactive Waste Disposal Facility:

1. NUREG–1199, Rev. 1, "Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility";

2. NUREG–1200, Rev. 1, "Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility";

These documents were revised to provide technical guidance for the belowground vault and earth mounded concrete bunker alternative disposal methods. The first publication identifies information needed by NRC to perform its licensing review; the second publication explains the technical review process.

ADDRESS: Copies of NUREG–1199, Rev. 1, and NUREG–1200, Rev. 1, may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Jr., Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3438.

SUPPLEMENTARY INFORMATION: Section 61.10 of Title 10 of the Code of Federal Regulations (10 CFR 61.10) identifies the information that must be submitted as part of a license application for a Low-Level Radioactive Waste Disposal Facility. The Nuclear Regulatory Commission's safety review is primarily based on the information provided by the applicant in the license application.

The NUREG–1199, Rev. 1, "Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility" (SF&C) identifies the specific information which should be provided and the format for presenting that information.

The use of the SF&C will (1) help ensure that the license application contains the information required by 10 CFR Part 61, (2) aid the applicant in ensuring that the information is complete, (3) help persons reading the application to locate information, and (4) contribute to shortening the time required to review the license application. Applications must conform to NUREG–1199, Rev. 1, to ensure that the NRC staff can review and process that application within 15 months in order to meet the requirements of the Low-Level Radioactive Waste Policy Amendments Act of 1985, (LLRWPAA), Pub. L. 99–240. By defining the contents of a complete application, this document provides a basis for making the completness findings pursuant to section 5(e)(1)(C) and (D) of the LLRWPAA or 1985.

The NUREG–1200, Rev. 1, "Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility" (SRP) has been prepared for the guidance of NRC staff license reviewers in performing safety reviews of applications to construct and operate a low-level waste disposal facility. The principal purpose of the SRP is to ensure the quality and uniformity of staff reviews. Another purpose is to improve communication and understanding of the staffs review process for State Officials, Compact Commissions and interested members of the public and the industry.

Dated at Rockville, Maryland, this 14th day of March, 1988.

For the Nuclear Regulatory Commission.

Michael S. Kearney,

Chief, Division of Low-Level Waste Management and Decommissioning.

[FR Doc. 88–6103 Filed 3–18–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–335]

Florida Power and Light Co.; Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 91 to Facility Operating License No. DRP–67, issued to the Florida Power and Light Company (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida. The amendment was effective as of the date of its issuance.

The amendment allows the expansion of the spent fuel pool storage capacity from the current 728 fuel assemblies to the proposed 1706 fuel assemblies. The expansion is to be achieved by removing the existing racks and installing new, higher density ones.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 31, 1987 (52 FR 32852). A request for a hearing was filed on September 30, 1987 by Mr. Campbell Rich.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards considerations are involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards considerations. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has prepared an Environmental Assessment (March 4, 1988, 53 FR 7065) related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for St. Lucie 1 dated June 1973.

For further details with respect to the action, see (1) the application for amendment dated June 12, 1987, as supplemented by letters dated September 8, 1987, October 20, 1987 (three letters), December 21, 1987, December 22, 1987,December 23, 1987 (three letters), and January 29, 1988, (2) Amendment No. 91 Facility Operating License No. DPR–67, (3) the Commission's related Safety Evaluation, and (4) the Commission's related Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Indian River Junior College Library, 3208 Virginia Avenue, Fort Pierce, Florida 33450. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

E.G. Tourigny,

Project Manager, Project Directorate II–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6104 Filed 3–18–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25457; SR–NASD–87–40]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Approving Proposed Rule Change

March 14, 1988.

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 7, 1988, copies of a proposed rule change pursuant to section 19 of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to establish a two-year Pilot Program with the Stock Exchange of Singapore ("SES"), for the exchange and distribution of information on certain selected securities.

Notice of the proposed rule change together with the terms of substance of the proposal was given by the issuance of a Commission release (Securities Exchange Act Release No. 25065, October 28, 1987) and by publication in the **Federal Register** (52 FR 42167, November 3, 1987). The Commission did not receive any written comments on the proposed rule change.

The Commission believes the Pilot Program represents an important step in the internationalization of the securities markets. It will be the first Pilot Program for the exchange of static information between a Far East exchange and a United States ("U.S.") self-regulatory organization. The Commission believes that the NASD's approach, a two-year Pilot Program for the daily exchange of end-of-day quotation information, is a practicable preliminary step to determine the degree of interest in Singapore for U.S. over-the-counter

("OTC") securities. The trial nature of the program will enable the NASD and the SES to explore the possibility for and implications of a trading link between the two entities while they address any problems that might arise with the information exchange.

The NASD-SES Pilot Program provides only for the exchange of end-of-day static information concerning 35 securities specified in the agreement.[1] The program does not contemplate a trading linkage.[2] Investors in both countries will continue to purchase securities in the same manner as before. Quotation information will be disseminated over NASDAQ Level 2 and 3 terminals, which for the most part are only located in firm upstairs trading rooms and headquarter offices. Thus, data on the 35 Pilot securities predominately will benefit NASDAQ (SES) market makers who would be preparing to establish their opening markets in those securities.[3]

Finally, any potential for increased manipulative activity is substantially reduced because of the nature of the information exchanged and because there is no overlap in the trading hours of the NASDAQ and the SES markets.[4] Nevertheless, as stated below, the NASD and SES have agreed to establish procedures to share surveillance information if necessary. Such surveillance sharing procedures should help to detect and deter possible abuse.

Specifically, the agreement between the NASD and the SES provides that the NASD will have access to all regulatory information it needs for purposes of its surveillance and investigation responsibilities with respect to the designated securities. In this regard, although the NASD–SES surveillance sharing agreement is general, in view of the fact that the Pilot Program is for the exchange of static information only, the Commission believes that the surveillance measures in the agreement constitute adequate regulatory safeguards for the limited purposes of the Pilot Program. Moreover, the Monetary Authority of Singapore expressly has represented that Singapore does not have a blocking statute that prevents access to regulatory information for the purpose of conducting investigations.[5] In addition, the Pilot Program will provide both parties with the opportunity to evaluate each others' willingness to cooperate concerning information disclosure, quotation and trading halts, suspensions and resumption of trading, and the surveillance and investigation of trading in securities of mutual market concern. Given the limited circumstances, the Commission believes that this exchange of quotation information will enhance market efficiency without raising significant new concerns regarding the enforcement of the U.S. securities laws. The Commission emphasizes, however, the importance of assurance of cooperation among the relevant regulatory authorities with respect to the reciprocal exchange of surveillance and investigatory information.

The Commission finds that approval of the proposed rule change on a two-year pilot basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A and 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved for a period of two years from the date of this Order.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6093 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

[1] The planned link between the OTC markets proposes that 35 NASDAQ issues will be eligible for quotation in the newly created SES Foreign Equities Market by certain Singapore dealers. The securities were selected based on the issuer's overall international significance and/or particular interest in Southeast Asia.

[2] Any change in the terms or operation of the Pilot Program must be submitted to the Commission for its review pursuant to section 19 of the Act.

[3] The NASD represented to the staff that it will undertake to monitor quotations received from the SES pursuant to the market linkage for distribution over the NASDAQ system to evaluate the accuracy of the quotes and their relationship to the prevailing market when disseminated in this country.

[4] There is a thirteen hour time difference (twelve hours during Eastern Daylight Time) between Singapore time and Eastern Standard Time in the United States.

[5] *See* letter to Frank Wilson, Executive Vice President and General Counsel, NASD from Koh Beng Seng, Director, Monetary Authority of Singapore, dated February 23, 1988.

[Release No. 34-25459; File No. SR-NASD-87-47]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 28, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to add section 67 to the NASD's Uniform Practice Code, requiring syndicate managers of public offerings underwritten on a firm-commitment basis to notify the NASD of anticipated delays in the closing of such offerings.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25307, February 4, 1988), and by publication in the **Federal Register** (53 FR 4087, February 11, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6094 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25451; File No. SR-NYSE-87-48]

Self-Regulatory Organizations; Filing and Immediate Effectiveness to a Portion of the Proposed Rule Change by New York Stock Exchange, Inc.; Rate Increases Affecting Electronic Access Membership Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting rate increases affecting Electronic Access

Membership dues.[1] The proposed new fee for 1988 will be $77,000 instead of the current amount of $37,000. In addition, the proposed rule change provides for annual adjustments to the Electronic Access Membership dues which will be 70% of the 12 month average Physical Access fee.[2] Thus, under the proposal, the 1989 Electronic Access Membership fee would be calculated in the following manner:

$136,960 (current physical access fee)
+1,500] (dues)
$138,460

$70% of $138,460=$96,922.

Accordingly, under this aspect of the proposal, in 1989, Electronic Access member firms would be required to pay dues totalling $96,922, a 26% increase over the proposed 1988 Electronic Access Membership fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) The purpose of this proposed rule change is to bring the cost of an Electronic Access Membership to a more equitable and realistic level, commensurate with the significant rise in seat and lease prices over the last several years.[3]

Costs for alternative forms of access, such as the purchase of equity seats or the fixing of lease rentals, are detemined by market conditions in negotiations between purchaser and seller or lessor and lessee. The dues charged by the Exchange to physical access members are measured largely by the average of the annual rental payable under *bona fide* leases, and are thus also affected by market conditions.[4]

Consequently, it is necessary that Electronic Access Memberships be realistically priced to reflect the market conditions as evidenced by the rise in seat prices and annual lease rentals.

The statutory basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using is facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not formally solicited written comments regarding this proposed change, and no unsolicited written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed increase in the Exchange's 1988 Electronic Access Membership fee is reasonable and consistent with section 6(b)(4) of the Act in view of the increased market value of alternate forms of access occurring over the years (which, according to the Exchange, largely reflects market conditions) and will allow the cost of an Electronic Access Membership to more accurately reflect its market value.[5]

The foregoing portions of the proposed rule change that will increase the Electronic Access Membership fee for 1988 have become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and paragraph (e) of Securities Exchange Act Rule 19b–4. At anytime within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act. The Commission is soliciting comments pursuant to section 19(b)(2) of the Act on the remaining portion of the filing that would establish a formula for adjusting the Electronic Access Membership fee annually.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be

[1] Article II, section 1(c) of the NYSE Constitution provides that an electronic access member, upon payment of its annual dues, is entitled "to maintain electronic or telephonic access to (i) the floor facilities of a member, member firms or member corporation, and (ii) the Designated Order Turnaround System of the Exchange, and (iii) such other automated trading systems of the Exchange as the Board of Directors may from time to time determine." There are currently 95 NYSE electronic access members. Electronic Access members generally do not have physical access to the Exchange floor; rather, as mentioned previously, these members gain access to the trading floor electronically or by telephone.

[2] Physical Access members generally gain access to the Exchange floor through either ownership or leasing of an Exchange seat, whereas Electronic Access members gain access to the Exchange floor primarily through electronic hardware or by telephone. *See*, NYSE Constitution, Article II, section 1(B) and Article X, section 1(B).

[3] For example, according to documents included in the filing, the price of an equity seat in 1984 ranged from $290,000 to $400,000 while annual lease rentals ranged from $30,000 to $70,000. By contracts, in 1987, the price of an equity seat ranged from a low of $605,000 to a high of $1,150,000, with the cost of annual lease rentals ranging from $65,000 to $168,000. During this four year period of dramatic increases in the prices of equity seats and annual lease rentals, which generally reflects changes in the marketplace, the Exchange imposed only one rate increase in electronic access membership dues in 1984 from $18,500 to the current amount of $37,000.

[4] In this regard, the NYSE notes that while the costs of other alternative forms of access to the Exchange, through the purchase of equity seats or seat lease rentals are largely determined by market conditions, including physical access fees, which are determined by calculating the 12 month average of lease rentals, the dues charged for electronic access memberships are determined by the NYSE Board of Governors as provided in the Exchange's Constitution. *See*, Article X, Sections 1 B and C of the NYSE Constitution.

[5] *See*, Securities Exchange Act Release No. 20728 (March 6, 1984), 49 FR 9524, where the Commission last approved an increase in NYSE electronic access membership fees. In that order, the Commission relied on the fact that the proposed increase in fees was consistent with the increased value of other forms of access to the Exchange.

available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 11, 1988.

[FR Doc. 88-6095 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25460; SR-NYSE-87-28]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on August 28, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder to increase the size of the Opening Automated Report Service ("OARS") [3] from 5,099 shares to 30,099 shares.

The proposed rule change, together with its terms of substance, was noticed by the issuance of a Commission release (Securities Exchange Act Release No. 24993, October 5, 1987) and by publication in the Federal Register (52 FR 37862, October 9, 1987). No comments were received regarding the proposed rule change.

The OARS system automatically accepts member firms' preopening market orders up to the current size limit of 5,099 shares. The OARS system relieves specialists of the need to handle paper orders by automatically and continuously pairing buy and sell orders and calculating the order imbalance up to the opening, thereby assisting the specialist in setting the opening price. Once the market has opened and the order has been executed, OARS will also send execution reports to the member firms that placed their orders on the system.

Under the proposed rule change, the size of orders eligible for OARS would be increased from the present 5,099 shares to 30,099 shares. The Exchange believes that the proposed increase in the OARS size limit will enable NYSE member firms to obtain efficient execution of large size orders in a timely and reliable manner. These larger market orders are now generally given to the specialist at opening. Expanding the OARS size limit will enable many of these orders to be entered directly on OARS and ensure that the firms entering those orders on OARS will receive the execution reports more rapidly.[4]

In addition, the Exchange believes that the proposed increase in OARS order size eligibility will facilitate the Exchange's comparison and settlement process by allowing larger orders to be entered into the OARS system and thereby become subject to the system's enhanced comparison and settlement procedures.[5]

In the Commission's Order approving the OARS system,[6] we observed that OARS was designed to (1) achieve system efficiencies which would materially assist specialists in arranging the opening transactions in their assigned stocks through automation of several clerical tasks at the trading post for the critical period just prior to the opening; (2) improve reporting of completed trades through immediate dissemination of execution reports upon the opening of trading; and (3) result in fewer questioned trades at the opening, thereby promoting more efficient and accurate clearing and settlement of securities transactions. The Commission continues to believe that the OARS system provides major benefits to specialists and the market as a whole and agrees with the NYSE that the proposed increase in OARS order eligibility will serve to expand the number of pre-opening market orders eligible for entry into this system and thereby improve the Exchange's ability to provide more effecient and effective market operations, particularly during times of heavy order flow.[7]

The Commission has previously allowed increase in OARS order size eligibility to 30,099 shares for limited time periods such as the initial offerings of American Telephone & Telegraph and the divestiture issues in 1983,[8] and, more recently, as part of auxiliary opening procedures for handling increased order flow in connection with the Expiration Fridays of June 19, 1987 and September 18, 1987.[9] Experience with these events has proven the effectiveness of OARS in facilitating the opening trades in equity securities.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, and section 17A(a)(1) in that it will assist in the prompt and accurate clearance and settlement of securities transactions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 14, 1988.

[FR Doc. 88-6096 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] OARS is the opening system for the Exchange's "Super Dot" electronic order routing system through which member firms are able to transmit market and limit orders in NYSE listed securities directly to specialist posts on the Exchange floor. NYSE Rule 115A.30 sets out the procedures for the operation of the OARS system.

[4] The NYSE has indicated that, if this proposal is approved, it would increase the size of orders eligible for OARS by 10,000 shares immediately. Thereafter, the NYSE intends to increase the size limit in 10,000 share increments at three month intervals, depending on the Exchange's evaluation of the impact of increased order size limits on the ability of specialists to facilitate the opening and the reaction of members.

[5] As noted above, the OARS system automatically and continuously pairs buy and sell orders entered into the system from member firms electronically. The system "locks-in" these orders since the source, quantity and price of the orders are automatically offset against an NYSE omnibus account. Omnibus comparison is a mechanism that relieves the system user from having to compare his trade with the contra-side of the trade. This reduces the rate of uncompared orders, and means that OARS orders do not need to go through the regular way confirmation process.

[6] Securities Exchange Act Release No. 17132, September 8, 1980, 45 FR 60526.

[7] The NYSE has stated that it did not experience problems with the OARS system under the extremely heavy volume the Exchange encountered during the October 1987 market break. *See The October 1987 Market Break.* Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, Chapter 7, Note 72. The NYSE has informed the Commission that, with the proposed increase in order size eligibility for OARS, the system would be able to handle the order flow experienced during the October market break. Telephone conversation between Catherine R. Kinney, Senior Vice President of Equities, NYSE, and Robert J. Sevigny, Attorney, Division of Market Regulation, on March 11, 1988.

[8] Securities Exchange Act Release No. 20400, November 18, 1983, 48 FR 53627.

[9] Securities Exchange Act Release No. 24596, June 16, 1987, 52 FR 23618; Securities Exchange Act Release No. 24917, September 11, 1987, 52 FR 35176.

[Release No. 34-25458; File No. SR-OCC-88-03]

Self-Regulatory Organizations; Options Clearing Corp.; Filing of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1988, Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change described below. The proposal would expand OCC's valued securities program [1] to include preferred stock and corporate debt issues. The Commission is publishing this notice to solicit comment on the proposal.

I. Description of the Proposal

The proposed rule change would amend OCC Rule 604 dealing with forms of margin that OCC will accept from clearing members. Specifically, the proposal would expand OCC's valued securities program to enable OCC clearing members to post margin in the form of certain preferred stock and corporate debt issues (corporate bonds), in addition to common stock. The preferred stock and corporate bonds, like common stock, would be valued at 50% of current market value for margin purposes.

Under the rule change, preferred stock and corporate bonds would have to meet certain eligibility standards to be acceptable as OCC margin deposits. Preferred stock would be required to meet the same standards currently in place for common stock (*i.e.*, have a market value greater than $10 per share, be traded on a national securities exchange, have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan, or be traded in the over-the-counter market and designated as National Market System Securities pursuant to Rule 11Aa2-1 under the Act). The proposal would require eligible bonds to be listed on a nationl securities exchange and not be in default. This allows OCC to incorporate the listing and maintenance standards of the various exchanges, using the exchanges' assessments of the proper levels of safety and liquidity. The bonds also would need to have a current market value that is readily determinable on a daily basis.

Preferred stock and corporate bonds, like common stock, would be valued daily at the then maximum loan value of such securities pursuant to the provisions of Regulation U or such lower value as OCC's Margin Committee may prescribe.[2] Current market value would be the closing price on the primary market for such stock or bond during the preceding trading day or, if it was not traded in the primary market, the lowest reported bid quotation for such stock or bond at or about the close of trading on such day.

The proposal also would change OCC's limitation on margin credit available to a clearing member for the equity and debt securities of any one issuer. Currently, securities of any one issuer can not be valued at an amount in excess of 10% of the margin requirement in the account for which such securities are deposited. The proposal would limit the margin credit for the securities of any one issuer to 10% of the aggregate margin requirements of a given clearing member.

II. OCC's Rationale for the Proposal

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act. OCC states in its filing that the proposal would assure the safeguarding of securities and funds by enhancing OCC's margin protection. OCC believes the standards for both preferred stock and corporate bonds provide OCC with a proper level of safety and liquidity. Moreover, OCC believes the margin credit of 50% of the securities' current market value serves as an inherent safeguard.

III. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (2) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at OCC's principal office. All comments should refer to file number SR-OCC-88-3 and should be submitted by April 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority, 17 CFR 200.30-3.

Dated: March 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6097 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25448; File No. SR-Phlx-87-41]

Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange Relating to Continuity of the Office of the Chairman and Vice Chairman of the Board of Governors

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted on November 17, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78(b)(1) and Rule 19b-4 thereunder to remove restrictions on the number of terms to which the Chairman and Vice Chairman of the Board of Governors ("Board") may be elected.[1]

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Rel. No. 25351, February 12, 1988) and by publication in the **Federal Register** (53 FR 5508 February 24, 1988). No comments were received regarding the proposal.

Article IV, Section 4-2 of the Phlx By-laws currently limits the number of

[1] The valued securities program enables OCC clearing members to receive margin credit for certain equity securities pledged to OCC. Pursuant to Regulation U of the Federal Reserve Board, the maximum loan value of such stock is 50% of the securities' market value.

[2] Although convertible debt is defined as "margin stock" under Regulation U and therefore only 50% of the market value would be eligible as the advance rate, Regulation U recognizes non-convertible debt up to "good faith loan value," which OCC defines as 70% of market value. Nevertheless, in new Interpretation and Policy .09 to OCC Rule 604, OCC has prescribed the 50% rate for both convertible and non-convertible debt.

[1] Pursuant to Article IV, Section 4-1 of the Phlx's By-laws, the Board has two Vice Chairmen.

terms to which the Board Chairman and Vice Chairmen may be elected.[2] Under the provision, the Board Chairman is restricted to serving two consecutive two-year terms, while the Vice Chairmen are similarly restricted to serving four consecutive one year terms. The proposed rule change would eliminate these restrictions and would allow the Chairman and Vice Chairmen to serve unlimited terms.[3]

The Phlx has requested that the proposed rule change be approved before March 14, 1988 in order to accommodate elections for Chairman and Vice Chairmen scheduled for that day.

After considering the proposed amendment the Commission believes that the proposal to eliminate restrictions currently imposed on the number of terms to which the Board Chairman and Vice Chairmen may be elected is appropriate. In particular, the Commission believes that the proposal will enable current or future Board Chairmen and Vice Chairmen to propose long-term initiatives that extend beyond their current four year term limitations and allow them to oversee the implementation of these initiatives while in office. Further, the Commission notes that the Board Chairman and Vice Chairmen are elected by the Exchange membership; therefore, if Exchange members disapprove of or generally become dissatisfied with Board leadership and governance, they may express these sentiments through the Exchange's electoral process (*i.e.*, by nominating and electing candidates to these offices who fully represent their views). Finally, the Exchange maintains that the proposed rule change will provide added continuity to the governance of the Exchange thereby furthering investor protection and the public interest in accordance with section 6(b)(5) of the Act. In view of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in that the Exchange has scheduled board elections for March 14, 1988. The proposed rule change would allow the current Vice Chairman to run in that election. Moreover, to date the Commission has received no comments on the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: March 11, 1988.

[FR Doc. 88-6098 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

[2] We note, however, the By-law provides that each officeholder may seek re-election to office after a one year interval.

[3] Article XXII, Section 22-2 of the Phlx's By-laws generally requires the Board of Governors to provide written notice to the Exchange membership of any proposed amendment to the By-laws originating in, and approved by, the Board. After receiving a written announcement of the proposed By-law amendment, the membership has 10 days to request a special meeting to consider and vote on the proposed amendment. In the absence of such a request, the Board may adopt the amendment at any regular or special meeting with approval of fifteen members of the Board. The Phlx indicates in its filing that, in adopting the proposed amendment, it complied with these procedural requirements and notes that no request for a special meeting was made by the Exchange membership.

[Release No. 34-25449; File No. SR-PHLX-88-2]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Registered Options Traders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on February 18, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4 under the Act,[1] hereby proposes to amend its Options Rule 1014 regarding Registered Options Trader ("ROT") assignments and responsibilities. Currently ROTs are permitted to select up to 30 or more options as their assigned classes. Under Commentary .03 to Rule 1014, 50 percent of their trading activity in each quarter must be in their assigned options. The proposed rule change would eliminate these provisions and provide instead that ROTs are automatically assigned in all classes of options traded on the Exchange.

ROTs would now be subject to the market maker obligations set forth in section (c) of the rule for all classes of securities. The rule provides that the ROT, when called into a trading crowd, is expected to engage to a reasonable degree under the existing circumstances, in dealing for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.

The wording of Options Rule 1022 is also being revised to conform to the new Rule 1014. This rule provides that Specialists and ROTs must report to the exchange opening positions and every purchase and sale in each option in which they are assigned by 9:30 a.m. on the business day following order entry date. ROTs will not be required to submit reports for all options classes.

A number of Options Floor Procedure Advices that generally track the wording of specific sections of Rule 1014 have also been revised to conform to the amended rule. These include Advice No. A-3, Requestig Market Quotations; No. A-4, Specialist as Registered Options Trader; and No. B-3 Trading Requirements.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepare summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The PHLX currently employs a system on its Options Floor where there are both Specialists and Registered Options Traders ("ROTs"). Every option traded on the PHLX has been allocated to a specialist unit which has undertaken the responsibility to engage in a course of

[1] 17 CFR 240.19b-4 (1987).

dealings for its own account in order to help maintain a fair and orderly market in its assigned options as well as executing the commission orders in such options which have been entrusted to the unit. (See Options Rule 1020). ROTs are traders on the Options Floor who are permitted to trade for their own account. Similar to specialists, ROTs are currently registered to trade one or more specific classes of options, but unlike specialists, ROTs are required to conduct at least 50 percent of their trading activity in any quarter (measured in contract volume) in those classes of options to which they are assigned (See Options Rule 1014).

ROTs, like specialists, are subject to certain affirmative and negative obligations. In those classes of options in which ROTs are registered to trade, the ROT is obligated to make markets when there exists or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts or the same class. ROTs can be called into the trading crowd at the post where one of their assigned options is traded and requested to make a market.

The PHLX is proposing to abolish this system whereby ROTs are assigned a limited number of options. The ROT would now be assigned to trade every option on the Exchange, except those where the ROT or the ROT's firm is registered as options specialist. In those options, the ROT is prohibited from trading in an ROT capacity. The requirement that ROTs conduct at least 50% of their trading activity in assigned options would no longer be applicable since 100% of their trading activity will be in assigned options. The language describing criteria for assigning options to ROTs and that regarding the 50% requirement has been deleted. Further, the language in the rule which sets out different obligations of ROTs in appointed and non-appointed classes has been deleted. Options Rule 1022 and the applicable Options Floor Procedure Advices (A3, A4, and B3) have also been revised to reflect the changes to the main ROT rule (Rule 1014).

The Exchange has determined that this system of assigning a limited number of options to ROTs and its corrolary 50% rule are unnecessary, anti-competitive, burdensome and difficult to monitor. For these reasons, the Exchange is proposing this amendment of the ROT rule.

When the rule was originally enacted, there were relatively few ROTs on the Options Floor. It was often difficult to find an ROT to make a market so the Exchange assigned ROTs the responsibility to make markets in those options in which they were registered. This rule assured that there was always at least one ROT available to make a market when called upon. Currently on the Options Floor, there are over 150 ROTs. Although there is always at least one ROT available and willing to make a market in a particular option, it is not necessarily one of the ROTs who is registered in that option. This can and has presented a problem near the end or the quarter when an ROT has done close to 50 percent of his trading in nonregistered options. Large public customer orders could be turned away because the ROTs who can provide the deepest markets are unable to participate without violating the 50 percent requirement and facing a warning or fine.

The current assignment rule was introduced because it was felt necessary to provide liquidity across-the-board, particularly in less active options. This concern has proven unfounded, and is made unnecessary by several other Exchange rules and market structure arrangements that more directly address this concern.

Under Rule 1063, an Options Floor Broker must make sure that at least one ROT is present at the trading post prior to representing an order for execution. For every execution of a public customer order, there is then guaranteed to be a specialist and at least one ROT making a market in the option. Under the provisions of Rule 1014, only the few ROTs who were assigned in a specific option generally could be required to come into that trading crowd to make a market. The new rule would allow specialists, Floor Officials and Floor Brokers to ask any ROT to join a trading crowd and make a market. This is clearly more efficient, more competitive, and better for public customers. Moreover, the specialist himself is obligated to trade for his own account in options when there exists a lack of price continuity or lack of depth in the options market or a temporary disparity between supply and demand in the options market. Further, ROTs are required under Rule 1014 to execute in person and not through the use of orders, the greater of 1,000 contracts or 50% of their contract volume on the Exchange in each quarter (*See*, Commentary .14 accompanying Rule 1014 and Options Floor Procedure Advice B–3). ROTs are required by this rule to make two-sided markets in most options instead of just one-sided markets through brokered orders.

An additional safeguard is a recently approved amendment to PHLX Rule 1033 which requires a specialist or ROT to fill public customer orders in a series to a minimum depth of ten contracts if that specialist or ROT is quoting the best bid or offer in such series. This requirement assures liquidity in all series where the specialist or ROT quotes the best market.

The Exchange has also determined that eliminating the assignment rule will foster greater competition on the trading floor. Currently, ROTs are allowed to trade in every option on the PHLX as long as the majority of their trades are in their assigned options. This rule has hindered ROTs from joining trading crowds because the option being traded is not one of their assigned options. When the ROT is barred from joining a trading crowd that he otherwise would have joined, there is less competition with the specialist and therefore the quote spreads are wider and the markets less liquid than they could have been. If ROTs are permitted to trade freely in any option they will join more trading crowds which will provide more liquidity and encourage better markets to be made.

Finally, this rule requires strict monitoring by both the ROTs and the Exchange's Market Surveillance Department. Further, there are exceptions built into the rule that create opportunities for error and disagreement. For instance, if the ROT is temporarily acting as a specialist in classes of options to which he is not assigned, that activity is not counted in the calculation. The responsibility to keep track of this percentage is unnecessarily burdensome to both the Exchange staff and the ROT firms. The Market Surveillance Department also must guard against extraordinary trading activity between ROTs in their assigned options near the end of a quarter. This might occur to artificially increases the ROT's activity in those options to meet the 50% requirement and is reversed after the quarter.

In August of 1987, the Commission approved the Exchange's new alternate specialist rule 201A. In that rule,

approved equity specialists are permitted to apply to be alternate specialists in all issues except those in which the alternate specialist or any person associated with the alternate specialist or the member organization with which the laternate specialist is affiliated, is either a specialist in the options overlying that equity issue, or an ROT with an assignment in the overlying options. This new ROT rule will now make all ROTs assigned in all options. There will most likely be a greater number of alternate specialists who are affiliated with ROTs in the overlying options now. The Department of Securities will be reviewing alternate specialist applications to make sure that the unit is not applying to be registered as an alternate specialist in any equity issue where they are affiliated with an ROT unit.

Options Rule 1022 is also being revised to reflect the fact that ROTs are now assigned in all options. This rule provides that Specialists and ROTs must report to the Exchange opening positions and every purchase and sale in each option in which they are assigned by 9:30 a.m. on the business day following order entry date. ROTs will now be required to submit reports for all options classes.

An additional change is being made to Rule 1022 which is purely administrative. The daily time for reporting opening positions and purchases and sales for specialist and ROT accounts used to be 10:00 a.m. when the Exchange began trading on its equity and equity options floors at 10:00 a.m. The purpose of Rule 1022 was to require submission of these reports at the opening of trading every day. In coordination with the New York Stock Exchange, in 1985, the Exchange changed its opening time on these trading floors to 9:30 a.m. and revised its rules accordingly. Through an oversight, it neglected to revise Rule 1022 at that time. The Exchange now wishes to rectify this problem concurrent with this substantive rule change.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to perfect the mechanism of a free and open market and to foster cooperation and coordination with persons engaged in regulating and processing information with respect to securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition. Indeed, the Exchange believes the proposed will foster competition on its floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will: [A] By order approve such proposed rule change, or, [B] institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 11, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6099 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25450; File No. Phlx 87-30]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Professional Execution Standards Applicable to all Orders Received by the Specialists Over the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1987 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc., pursuant to Rule 19b-4 of the Act, submits a proposed rule change specifying and requiring adherence to professional exceution standards with respect to all orders received by specialists over the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") on an order delivery system basis for manual execution.

The following constitutes the full text of the proposed rule change (deletions bracketed; additions italicized).

Rules of Board of Governors

* * * * *

Rule 229. No change.

* * * Supplementary Material

General

The following PACE execution parameters are minimum standards. Orders transmitted to the floor through the PACE system can be executed on a basis better than the applicable minimum standard:

.01 Member organizations wishing to participate in PACE may send to the Philadelphia trading floor market and limit orders up to the maximum number of shares traded under PACE as shall be fixed by the Exchange from time to time. *All orders in eligible securities shall be executed in whole or in part on a first in first out basis.*

.02 through .10(a) No change.

.10(b) Round-lot limit orders of 600 to 1000 shares, [and] PRL's of 601 to 1099 shares *and such limit orders of greater size that the specialist may accept*

entered after the opening shall [not be subject to the execution parameters set forth in Rule 229 and shall be executed in accordance with other applicable rules of the Philadelphia Stock Exchange.] *be provided a professional execution in accordance with the following standards:*

1. Circumstances: Limit order price is between the PACE Quote when received by the specialist.

Standard: Each time the New York market prints a trade at the limit order's price, a portion of the limit order equal to the size of the New York market print shall be entitled to be executed. Additionally, marketable PACE limit orders are due executions against contra side Phlx orders regardless of whether the primary market prints trades at the limit price.

2. Circumstance: Limit order price is on the PACE Quote when received by the specialist.

Standard: The quotation size associated with the PACE bid or offer which matches the limit price shall be ascertained (hereinafter referred to as the Reference Quote). The limit order shall be entitled to an execution when the New York market prints a trade or trades equalling the limit price and aggregating to the size of the Reference Quote; after which each time the New York market prints a trade at the limit order's price, a portion of the limit order equal to the size of the New York market print must be executed.

3. Circumstance: Limit order price is away from the PACE Quote when received by the specialist.

Standard: When the PACE bid or offer quotation, as the case may be, reaches the limit price the size of that quotation must be ascertained at that instant. The limit order then is entitled an execution when the New York market prints a trade or trades at the limit price aggregating to:

(1) one-half the size of the Reference Quote size for limit orders on the book for over one day or (2) the full size of the Reference Quote size for limit orders placed on the book on the same day in which they are executed; after which each time the New York market prints another trade at the limit order's price, a portion of the limit order equal to the size of the primary market print must be executed.

4. Circumstance: Limit price traded through by a transaction reported on a market eligible to compose the PACE Quote.

Standard: The limit order in its entire size, regardless of the size of the trade that caused the trade-through, must be executed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

PACE currently provides to Phlx member organizations a cost-efficient, competitive order delivery and execution system for pubilc customer orders. Under the proposed rule change, both market and limit orders up to 599 shares will continue to be executed in accordance with the current provisions of Phlx Rule 229. For limit orders of 600 shares and greater, the Exchange expects that specialists will provide a professional execution, but is rules to date have not provided guidance regarding what constitutes a professional execution of such orders. In this regard, the proposal provides both specialists and order entry firms with standards for professional execution of limit orders above 599 shares but up to 1,099 shares or as great an amount as specialist so accepts, which are eligible for routing to the specialist over the PACE order delivery system. By specifying these execution standards in the rules of the Exchange, the proposed rule will provide for increased consistency in the execution of limit orders on the floor and will provide notice to both specialists and PACE users of the kind of execution they can expect for larger limit orders delivered over the PACE system. It should be noted, to the extent a specialist accepts limit orders over the PACE system above 1099 shares, these orders would also be entitled to an execution under the terms of the proposed rule.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles trade; facilitate transactions in securities and remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Firth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted on or before April 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 11, 1988.

[FR Doc. 88-6100 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 15, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Genentech, Inc.
Common Stock, $0.02 Par Value (File No. 7-3149)

The Neiman-Marcus Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-3150)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 5, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6101 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16312; File No. 812-6695]

FVL Growth Fund, Inc.; Application for Deregistration

March 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregulation under the Investment Company Act of 1940 ("1940 Act").

Applicant: FVL Growth Fund, Inc.

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Application for an SEC order declaring that Applicant has ceased to be an investment company.

Filing Date: The application was filed on January 6, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later 5:30 p.m., on April 5, 1988. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One New York Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Cindy J. Rose (202) 272-3032 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the 1940 Act on Form N-8A on November 25, 1977, as a non-diversified, open-end management investment company. Applicant filed Form S-5 under the Securities Act of 1933 on December 21, 1977. The 1933 Act Registration Statement was declared effective on December 22, 1977.

2. Applicant is a corporation organized and existing under the laws of The State of Maryland.

3. The Board of Directors of Applicant approved an Agreement and Plan of Reorganization (the "Plan") at a meeting on March 19, 1987 and at a Special Meeting on April 16, 1986, the shareholders of the Applicant approved the adoption of the Plan. On April 30, 1987, Applicant transferred all of its assets and liabilities to Variable Investors Series Trust, a Massachusetts business trust (the "Trust"), pursuant to the Plan in return for a number of shares of beneficial interest of the Common Stock Portfolio of the Trust (the "Common Stock Portfolio") equal to the number of shares of Common Stock of Applicant then outstanding. On April 30, 1987, immediately prior to the transaction, Applicant had 1,914,941.568 shares of Common Stock with a net asset value on a per share basis of $22.37. Immediately thereafter, Applicant distributed to its sole shareholder in complete liquidation all such shares of beneficial interest in the Common Stock Portfolio. Each share of beneficial interest in the Common Stock Portfolio immediately after the transactions described above had a net asset value equal to the net asset value of a share of Common Stock of Applicant immediately prior to such transactions.

4. Applicant has no outstanding assets except its name and its status as a Maryland corporation and a registered investment company. Applicant has no outstanding liabilities other than those assumed by the Trust, which include all of Applicant's fees and expenses in connection with the Plan.

5. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceedings.

6. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs. Applicant will file a Certificate of Dissolution with the Department of Assessments and Taxation of The State of Maryland.

7. The sole securityholder of Applicant is First Variable Life Insurance Company. There are no former securityholders of Applicant to whom distributions in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6102 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1057]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: The Retail Price Schedule is the source of information used in

establishing and justifying temporary lodging, travel per diem, and post (cost of living) allowances for all Federal civilian employees, statutory salaried employees, and Uniformed Services personnel assigned to foreign and non-foreign areas. The following summarizes the information collection proposal submitted to OMB:

Type of Request—Extension.

Originating Office—Bureau of Administration.

Title of Information Collection—Retail Price Schedule.

Form Number—DSP-23.

Frequency—Quarterly and Annually.

Respondents—Merchants.

Estimated Number of Responses—670.

Estimated Burden Hours—1,871.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Date: March 11, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88-6062 Filed 3-18-88; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-017]

Meetings of the Working Groups for the Subcommittee on Vapor Control; Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of meetings of the Fire Protection Working Group, Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The purpose of the working groups is to develop recommended safety requirements for vapor control systems in their respective areas. The recommendations of each working group will be considered by the full Subcommittee at its next meeting. The meetings of the working groups will be held on Thursday, April 7, 1988 in Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC. Prior to convening the working groups, members of each working group will meet jointly in order to coordinate efforts. The meeting is scheduled to begin at 9:00 a.m.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Break up into individual working groups.
4. Discussion and development of safety requirements relating to vapor control systems and their components in the area of each working group.
5. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: March 16, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-6126 Filed 3-18-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-015]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Personnel Licensing and Manning will meet on 15 April 1988 in Room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will begin at 1:00 p.m. The agenda for the meeting follows:

(a) Interim Final Rule on Licensing of Maritime Personnel, and

(b) Inland Radar.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2110, 2100 Second Street, SW., Washington, DC 20593-0001 or by calling (202) 267-1477.

Dated: March 16, 1988.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88-6127 Filed 3-18-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Danbury Municipal Airport, Danbury, CT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by City of Danbury, Connecticut for Danbury Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Danbury Municipal Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 22, 1988.

DATES: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is February 24, 1988. The public comment period ends on April 24, 1988.

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, MA 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Danbury Municipal Airport is in compliance with applicable requirements of Part 150, effective February 24, 1988. Further, the FAA is reviewing a proposed noise

compatibility program for that airport which will be approved or disapproved on or before August 22, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by the FAA to be in compliance with the requirements of the Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Danbury submitted to the FAA on July 9, 1987, noise exposure map, descriptions and other documentation which were produced during Airport Noise Compatibility Planning (Part 150) Study at Danbury Municipal Airport from July 1985 to May 1987. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Danbury. The specific map under consideration is Figure 1.1 along with the supporting documentation in Volume I: Noise Exposure Map of the Part 150 Study. The FAA has determined that the map for Danbury Municipal Airport is in compliance with applicable requirements. This determination is effective on February 24, 1988. The FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Danbury Municipal Airport, also effective on February 24, 1988. Preliminary review of the Submitted materials indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 22, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.22. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, MA 01803

Mr. Paul D. Estefan, Airport Administrator, Danbury Municipal Airport, Wibling Road, Danbury, CT 06810

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on February 24, 1988.

Timothy P. Forté,

Acting Director, New England Region.

[FR Doc. 88-5921 Filed 3-18-88; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for New Orleans International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Publ. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the New Orleans Aviation Board. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for New Orleans International Airport were in compliance with applicable requirements effective February 25, 1987. The proposed noise compatibility program will be approved or disapproved on or before August 18, 1988.

DATES: The effective date of the start of FAA's review of the nosie compatibility program is February 20, 1988. The public comment period ends April 20, 1988.

ADDRESS: Comments on the proposed noise compatibility program should be submitted to Donald C. Harris, Department of Transportation, Federal

Aviation Administration, Fort Worth, Texas 76193–0611.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, at the above address, (817) 624–5609.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for New Orleans International Airport which will be approved or disapproved on or before August 18, 1988. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for New Orleans International Airport, effective on February 20, 1988. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 18, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Department of Transportation, Federal Aviation Administration, ATTN: Donald C. Harris, Fort Worth, TX 76193–0611

Director of Aviation, New Orleans Aviation Board, New Orleans International Airport, New Orleans, LA 70141

Questions may be directed to the individual named above under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, February 20, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88–5922 Filed 3–18–88; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–88–10]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 11, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 15, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
21780	United States Air Force Auxiliary	14 CFR 61.118	To allow Civil Air Patrol members holding private pilot certificates to be reinbursed for fuel, oil, and maintenance while serving on official Civil Air Patrol missions.
22558	Boeing Commerical Airplane Co	14 CFR 47.69(b)	To extend Exemption No. 3513E, which allows petitioner to use Dealer's Aircraft Registration Certificates outside the United States for flight testing and sales demonstrtions.
25526	DORNIER GmbH	14 CFR 43.3(a), 145.71, and 145.73	To allow petitioner to be certified as a foreign repair station to work on and approve products for return to service on U.S.-registered DORNIER 228 aircraft regardless of base or area of operation.
25533	British Airways Plc	14 CFR 145.71 and 145.73	To allow petitioner, at its approved foreign repair stations and London (Heathrow) Airport, London (Gatwick) Airport, and Treforest in Wales to carry out maintenance on U.S.-registered aircraft normally operated and maintained wholly within the United States

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
054CE	Air Tractor, Inc	14 CFR 23.49(b)	Petition for exemption from the stall speed requirements of § 23.49 for the Air Tractor Models AT-503 and AT-802 airplanes.
055CE	Swearingen Engineering and Technology, Inc.	14 CFR 23.803(e)(2)	Petition for exemption from the requirements of § 23.803(e)(2) relative to a means of stopping rotation of engines in support of the certification of the SA-30 airplane.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
23908	Piedmont Airlines	14 CFR 121.371(a) and 121.378	To extend Exemption No. 3974A that allows petitioner to employ original equipment manufacturers, Braathens S.A.F.E. of Stavanger Airport, N-4050 Sola, Norway, and FFV Aircraft Maintenance of S-581 82 Linkoping, Sweden, to overhaul and repair its Fokker F-28 aircraft components, accessories, and engines, even though the companies and their employees performing the work do not hold appropriate U.S. airman certificates. *Grant, March 8, 1988.*
25449	Channel Flying, Inc.	14 CFR 43.3(g)	To allow pilots of petitioner to remove seats in petitioner's single-engine aircraft so that medivacs can be conducted from remote locations as well as providing delivery of mail, groceries, and freight. *Grant, March 10, 1988.*
25494	Bohlke International Airways	14 CFR 43.3(g)	To allow properly certificated and trained pilots employed by petitioner to remove and replace cabin passenger seats and install and remove certain ambulatory stretcher and base assemblies that are installed in the Aero Commander 680V and Piper Seneca aircraft operated by petitioner. *Grant, March 8, 1988.*
25519	Wings West Airlines, Inc., d.b.a. American Eagle.	14 CFR 121.411(a) (1), (2), (3), and (6) and 121.413 (b) and (c).	To allow petitioner to use certain highly qualified pilot flight instructors from British Aerospace (BAe) for the purpose of training petitioner's initial cadre of pilots in the BAe advanced turbo prop (ATP) airplane in the United Kingdom (U.K.) in U.K.-registered BAe ATP airplanes without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. *Grant, March 7, 1988.*
25552	The Commissioner of the Department of Transportation of the State of Alaska.	14 CFR 45.29(h)	To allow persons operating within, to or from the State of Alaska to operate their aircraft without displaying 12-inch nationality and registration marks when penetrating the Alaska Air Defense Identification Zones (ADIZ) or Defense Early Warning Identification Zones (DEWIZ). *Partial Grant, March 4, 1988.*

[FR Doc. 88-6041 Filed 3-18-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-13]

Commercial Gauger Conditional Approval

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Notice of conditional approval.

SUMMARY: Pursuant to § 151.13 of the Customs regulations (19 CFR 151.13), Amspec, Inc., 1901 E. Linden Ave., Bldg 17, Linden, New Jersey 07036-1110, applied to Customs for approval to gauge imported petroleum and petroleum products, single organic chemicals in bulk, and animal and vegetable oils. Customs has determined that Amspec meets all of the requirements for approval as a commercial guager.

In accord with § 151.13(e) of the Customs regulations, Amspec, Inc., is hereby granted conditional approval to gauge the products named above in all Customs districts. This conditional approval will expire in six months unless it is superseded by permanent approval.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: March 16, 1988.

Roger J. Crain,

Special Assistant for Commercial and Tariff Affairs, Office of Technical Services.

[FR Doc. 88-6129 Filed 3-18-88; 8:45 am]
BILLING CODE 4820-02-M

Internal Revenue Service

[Delegation Order No. 122 (Rev. 2)]

Delegation of Authority; Assistant Commissioners; International and Equal Opportunity

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The authority to arrange for and authorize the temporary assignment of personnel between the Internal Revenue Service and State and local governments and institutions of higher education under Title IV of Pub. L. 91-648 is delegated to Assistant Commissioner (International), District Directors (for Tax Practitioner Institute assignments), and to Assistant to the Commissioner (Equal Opportunity) (for assignments to historically black colleges and universities). The text of the Delegation Order appears below.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Linda McAllan, IN:TAAS, Rm. 2211, Internal Revenue Service, Office of Assistant Commissioner (International), 950 L'Enfant Plaza South, SW., Washington, DC 20024, (202) 287–4323 (Not a toll-free telephone number).

Joe D. Hook,

Director, Office of Tax Administration Advisory Services.

Order No. 122 (Rev. 2)

Assignment of Personnel Under Intergovernmental Personnel Act

The authority vested in the Commissioner of Internal Revenue by Chapter 250 of the Treasury Personnel Manual to arrange for and authorize the temporary assignment of personnel between the Internal Revenue Service and State and local governments and institutions of higher education under Title IV of Pub. L. 91–648 is hereby delegated to the following officials:

1. Assistant Commissioner (International), for all Intergovernmental Personnel Act (IPA) assignment agreements except those in 2. and 3. below.

2. District Directors, for Tax Practitioner Institute IPA assignment agreements.

3. Assistant to the Commissioner (Equal Opportunity), for IPA assignments to Historically Black Colleges and Universities (HBCUs).

The authority delegated to the Assistant Commissioner (International) may be redelegated to the Director, Office of Tax Administration Advisory Services, and may not be further redelegated. The authority delegated to District Directors and Assistant to the Commissioner (Equal Opportunity) may not be redelegated.

Approved:

Michael J. Murphy,

Senior Deputy Commissioner.

Dated: February 17, 1988.

[FR Doc. 88–6128 Filed 3–18–88; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 10, 1988.

By direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Reinstatement (Medical).
3. VA Form 29–352.
4. The form is used by veterans to apply for reinstatement of their lapsed Government Life Insurance and/or Total Disability Income Provision. The data collected is used by the Veterans Administration to determine eligible for reinstatement.
5. On occasion.
6. Individuals or households.
7. 700 responses.
8. 1050 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Application for Authority to Close Loans on an Automatic Basis–Nonsupervised Lenders.
3. VA Form 26–8736.
4. This form is submitted by nonsupervised lenders desiring authority to process loans under 38 U.S.C. 1810 on automatic basis. The information collected is essential to VA application of standards required by 38 U.S.C. 1802(d)(3).
5. On occasion.
6. Businesses or other for-profit.
7. 200 responses.
8. 83 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Claims for Repurchase of Loan.
3. VA Form 26–8084.
4. This form is completed and submitted by the holder of a vendee account which has been guaranteed by the VA. The holder may request VA to repurchase a loan pursuant to 38 CFR 36.4600.
5. On occasion.
6. Businesses or other for-profit.
7. 9,696 responses.
8. 4,848 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Request to Lender for Status of Loan Account—LCS.
3. VA Form 26–8778.
4. This form is used by the VA to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System. VA must obtain this information in order to assure that necessary action is taken to cure the default.
5. On occasion.
6. Small businesses or organizations.
7. 175,000 responses.
8. 29,167 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Claim Under Loan Guaranty.
3. VA Form 26–1874.
4. This form is submitted by financial institutions to Veterans Administration in order to obtain payment of amounts claimed on foreclosed home loans originated and guaranteed under 38 U.S.C. 1810. Serves as the notification of default required of holder by 38 U.S.C. 1816(a).
5. On occasion.
6. Businesses or other for-profit, Small businesses or organizations.
7. 36,739 responses.
8. 36,739 hours.
9. Not applicable.

[FR Doc. 88–6115 Filed 3–18–88; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, April 7, 1988, at 2:30 p.m.
Thursday, April 21, 1988, at 2:30 p.m.

Thursday, May 5, 1988, at 2:30 p.m.
Thursday, May 19, 1988, at 2:30 p.m.
Thursday, June 2, 1988, at 2:30 p.m.
Thursday, June 16, 1988, at 2:30 p.m.
Thursday, June 30, 1988, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: March 14, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–6116 Filed 3–18–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 54

Monday, March 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, March 25, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Building proposals and budget regarding the Helena Branch of the Federal Reserve Bank of Minneapolis.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–6211 Filed 3–17–88; 3:55 pm]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413 and 485

[BERC-451-F]

Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols

Correction

In rule document 88-4431 beginning on page 6526 in the issue of Tuesday, March 1, 1988, make the following corrections:

§ 413.178 [Corrected]

1. On page 6549, in the first column, in § 413.178(e)(2), in the fifth line, "intern" should read "interim".

2. On the same page, in the same column, in § 413.178(g), in the third line, "disagree's" should read "disagrees".

§ 485.304 [Corrected]

3. On page 6550, in the second column, in § 485.304(a), in the first line, "By" should read "Be".

§ 485.306 [Corrected]

4. On page 6551, in the first column, in § 485.306(a), in the first line, "HCHA" should read "HCFA".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-80-4220-11; C-2486]

Continuation of Withdrawal; Colorado

Correction

In notice document 88-5218 beginning on page 7810 in the issue of Thursday, March 10, 1988, make the following correction:

On page 7810, in the third column, under "Hahn's Peak Reservoir Recreation Area Addition", in the first line, "82 W." should read "86 W.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-08-4212-12; A 21806, A 23047, A 23098]

Realty Action; Designation of Public Lands To Be Included in State Exchange in Cochise, Graham and Pinal Counties, AZ, and Cancellation of Private Exchange and State Exchange

Correction

In notice document 88-4596 beginning on page 6877 in the issue of Thursday, March 3, 1988, make the following correction:

1. On page 6878, in the first column, in the land description, under T. 6 S., R. 16 E., in Sec. 4, "S½N½S½" should read "S½N½,S½".

2. On the same page, in the same column, in the land description, under T. 16 S., R. 30 E., in Sec. 11, "NE¼N½ SE¼" should read "NE¼,N½SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 40, 41, and 42

[108.865]

Visas; Regulations and Documentation Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act

Correction

In rule document 87-25443 beginning on page 42590 in the issue of Thursday, November 5, 1987, make the following corrections:

§ 40.1 [Corrected]

1. On page 42592, in the first column, in § 40.1(d), in the first line, "used" should read "defined".

2. On the same page, in the second column, in § 40.1(f), in the second line, "competent" should read "component".

§ 40.7 [Corrected]

3. On page 42594, in the second column, in § 40.7(a)(14)(i), in the second line, "applies" should read "applicable"; in the fourth line, "applicable" should read "applies".

4. On the same page, in the third column, in § 40.7(a)(15)(ii), in the sixth line, "INS" should read "INA".

5. On page 42595, in the first column, in § 40.7(a)(19)(ii), in the 12th line, insert "a" after "made".

6. On the same page, in the third column, in § 40.7(a)(28)(i), in the 13th line, insert "to" after "bring".

§ 41.31 [Corrected]

7. On page 42603, in the first column, in § 41.31(a), in the second line, "of" should read "for".

§ 41.53 [Corrected]

8. On page 42606, in the first column, in § 41.53(a)(4), in the ninth line, "of" should read "or".

§ 41.105 [Corrected]

9. On page 42609, in the second column, in § 41.105(a)(3), in the eighth line, "11/2" should read "1½".

§ 41.112 [Corrected]

10. On page 42610, in the second column, in § 41.112(c)(2), in the fourth line, "basis" was misspelled.

§ 42.11 [Corrected]

11. On page 42614, in the second column, in § 42.11(a), in the left column of the table, the last entry was incomplete and should read "Accompanying spouse or child of alien classified SF-1".

12. On the same page, in the third column, in § 42.11(a), in the middle column of the same table, the entry opposite "SK-3" should read "101(a)(27)(I)(i) 100 Stat. 3434.".

NOTE: For a Department of State correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

Federal Register

Monday
March 21, 1988

Part II

Environmental Protection Agency

40 CFR Part 425

Leather Tanning and Finishing Industry Point Source Category Effluent Limitations Guidelines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 425

[FRL 3304-6]

Leather Tanning and Finishing Industry Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes effluent limitations guidelines and standards limiting the discharge of pollutants into navigable waters of the United States and the introduction of pollutants into publicly owned treatment works (POTW) by existing and new sources engaged in leather tanning and finishing. EPA is promulgating these amendments in accordance with a settlement agreement with the Tanners' Council of America, Inc. (The Tanners' Council of America, Inc., was redesignated the Leather Industries of America, Inc., in 1985). The agreement settles a dispute between the Council and EPA that was the subject of a petition for judicial review of the final leather tanning and finishing rule promulgated by EPA on November 23, 1982 (47 FR 52848).

This final rule, which was proposed on January 21, 1987 (52 FR 2370), (1) adds a new analytical method for the determination of the presence of sulfide in wastewaters for use in the Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory (Subpart C); (2) clarifies procedural requirements for publicly owned treatment works to follow in determining whether sulfide pretreatment standards are applicable; (3) revises certain of the effluent limitations for "best practicable control technology currently available" (BPT) and new source performance standards (NSPS); (4) changes the pH pretreatment standard for tanneries falling under the provisions of Subpart C; and (5) clarifies the production levels below which the chromium pretreatment standards for existing sources (PSES) do not apply. In addition, EPA clarifies in the preamble to this final rule its statements on median water use ratios, changes in subcategorization, tanneries with mixed subcategory operations, and composite samples of effluent discharges from multiple outfalls.

DATES: In accordance with 40 CFR 23.2 and 40 CFR 23.11, this rule shall be considered issued for the purposes of judicial review at 1:00 p.m. eastern daylight time on April 4, 1988. This rule shall become effective May 4, 1988.

Under section 509(b)(1) of the Clean Water Act as amended by section 505(a)(2) of the Water Quality Act of 1987, judicial review of this rule may be made by filing a petition for judicial review in the United States Court of Appeals not later than 120 days after the rule is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Address questions on the final rule to Rexford R. Gile, Jr., Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Leather Tanning and Finishing Industry Final Rule. The basis for this rule is detailed in the "Supplemental Development Document for Effluent Limitations Guidelines for the Leather Tanning and Finishing Point Source Category." A copy of this technical development document may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487-6000. Technical information may be obtained by writing to Rexford R. Gile, Jr., Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by calling (202) 382-7146.

The record for the final rule will be available for public review not later than April 4, 1988, at the EPA Public Information Reference Unit, Room M2904 (Rear) (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rexford R. Gile, Jr., (202) 382-7146.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

I. Legal Authority

These amendments to 40 CFR Part 425 are being promulgated under the authority of sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308 and 501 of the Clean Water Act [the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Act")]; 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), 1318, and 1361; 86 Stat. 816, *et seq.*, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217; and Pub. L. 100-4. These amendments to the regulation are also being promulgated in response to the Settlement Agreement in *Tanners' Council of America, Inc.* v. *U.S. Environmental Protection Agency*, No., 83-1191, (4th Cir.).

II. Background

A. Prior Regulations

EPA promulgated a regulation on April 9, 1974, establishing effluent limitations guidelines and standards for the leather tanning and finishing point source category based on the best practicable control technology currently available ("BPT"), the best available technology economically achievable ("BAT"), new source performance standards ("NSPS") for new direct dischargers, and pretreatment standards for new indirect discharges ("PSNS") (39 FR 12958; 40 CFR Part 425, Subparts A-F). The Tanners' Council of America, Inc., (TCA), challenged this regulation, and the U.S. Court of Appeals for the Fourth Circuit left BAT and PSNS undisturbed, but remanded the BPT and NSPS limitations and standards for several reasons (see *Tanners' Council of America, Inc.* v. *Train*, 540 F.2d 1188 (4th Cir. 1976)).

On March 23, 1977 (42 FR 15696), EPA promulgated pretreatment standards for existing sources ("PSES") for the leather tanning and finishing industry. This regulation established specific pH standards and other pretreatment standards for existing indirect dischargers to avoid interference with POTWs. This rule was not challenged.

EPA proposed a new regulation (44 FR 38746, July 2, 1979) establishing effluent limitations guidelines and standards for the leather tanning and finishing point source category based on revised BPT and NSPS to replace the remanded BPT and NSPS limitations and standards, new best conventional pollutant control technology ("BCT") limitations, and revised BAT, PSES, and PSNS limitations and standards. EPA accepted comments on the proposed regulation until April 10, 1980. The leather tanning and finishing industry commented that the data and supporting record material relied upon by EPA in proposing the regulation contained a large number of errors. The Agency responded by completely reviewing the entire data base and all documentation supporting the rulemaking, and by acquiring supplemental data during and after the comment period.

On June 2, 1982 (47 FR 23958), EPA made available for public review and comment supplementary technical and economic data and related documentation received after proposal of the regulation. The Agency also summarized the preliminary findings on how the supplementary record materials might influence the final rulemaking.

The final regulation for the leather tanning and finishing industry point source category was promulgated on November 23, 1982 (47 FR 52848) and established effluent limitations guidelines and standards to control specific toxic, nonconventional, and conventional pollutants for nine subcategories in the Leather Tanning and Finishing Category.

Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory (Subcategory 1)
Subpart B—Hair Save, Chrome Tan, Retan-Wet Finish Subcategory (Subcategory 2)
Subpart C—Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory (Subcategory 3)
Subpart D—Retan-Wet, Finish-Sides Subcategory (Subcategory 4)
Subpart E—No Beamhouse Subcategory (Subcategory 5)
Subpart F—Through-the-Blue Subcategory (Subcategory 6)
Subpart G—Shearling Subcategory (Subcategory 7)
Subpart H—Pigskin Subcategory (Subcategory 8)
Subpart I—Retan-Wet Finish-Splits Subcategory (Subcategory 9)

BPT effluent limitations guidelines were established for all subcategories based on high solids extended aeration activated sludge biological treatment. They included production-based effluent limitations (kg/kkg or lb/1,000 lb or raw material) for one toxic pollutant (total chromium), three conventional pollutants (BOD*5*, TSS, oil and grease), and established an acceptable pH range. BPT production-based effluent limitations were derived using subcategory median water use ratios, attainable effluent concentrations, and variability factors.

BAT and BCT effluent limitations guidelines were also established for all nine subcategories in the leather tanning and finishing point source category. The technology basis and production-based effluent limitations guidelines for BAT and BCT were the same as those for the promulgated BPT effluent limitations guidelines. The BCT effluent limitations guidelines control three conventional pollutants (BOD*5*, TSS, oil and grease), and established an acceptable pH range. The BAT effluent limitations guidelines controlled one toxic pollutant (total chromium).

The production-based NSPS for all nine subcategories limited one toxic pollutant (total chromium) and three conventional pollutants (BOD*5*, TSS, oil and grease), and established an acceptable pH range. NSPS were based on the same technology, effluent concentrations, and variability factors as BAT, but the production-based limitations for NSPS were different from those for BAT because the NSPS limitations were based on reduced water use ratios.

The final regulation established concentration-based categorical pretreatment standards for existing and new source indirect dischargers for one toxic pollutant (total chromium) for all nine subcategories except for existing small indirect dischargers in subcategories in Subparts A, C, and I.

Concentration-based categorical pretreatment standards were also established for the control of sulfides in subcategories in Subparts A, B, C, F, and H where unhairing operations are included. However, the regulation included a provision which allows a POTW to certify to the Regional Water Management Division Director of EPA in the appropriate Regional Office, in accordance with § 425.04, that the discharge of sulfide from a particular facility does not interfere with its treatment works. If this certification is made, and EPA determines that the submission is adequate, EPA will publish a notice in the **Federal Register** identifying the facility where the sulfide pretreatment standard would not apply.

The cost of pretreatment technology can be minimized by reducing to the maximum extent feasible the volume of wastewater treated. Therefore, the Agency used reduced water use ratios to calculate the costs of PSES/PSNS technology for indirect dischargers instead of median water use ratios for existing sources.

B. Challenge to the 1982 Regulation by the Tanners' Council of America, Inc.

The Tanners' Council of America, Inc. (TCA), filed a petition for judicial review of several aspects of the final regulation in the U.S. Circuit Court of Appeals for the Fourth Circuit on March 2, 1983 (*Tanners' Council of America, Inc.* v. *U.S. Environmental Protection Agency*, No. 83–1191), and followed this by filing with EPA an administrative Petition for Reconsideration on May 9, 1983. The Agency responded by completely reviewing the entire data base and all documentation supporting the rulemaking, and by acquiring supplemental data. After extensive discussions, TCA and EPA resolved the issues raised by the Council through a settlement agreement.

C. Settlement Agreement

On December 11, 1984, TCA and EPA entered into a comprehensive settlement agreement which resolved all issues raised by TCA in its petitions. EPA agreed to propose regulatory amendments and preamble language to the leather tanning and finishing regulation and to solicit comments on the regulatory and preamble language. TCA agreed to move to dismiss its petition for judicial review and voluntarily withdraw the "Petition for Reconsideration" if each provision of the final leather tanning and finishing industry regulation and each preamble statement is substantially the same as that called for by the settlement agreement.

Copies of the settlement agreement were sent to EPA Regional Offices and State NPDES permit-issuing authorities on December 21, 1984. In accordance with the settlement agreement, EPA proposed regulatory amendments and preamble language to the leather tanning and finishing regulation on January 21, 1987 (52 FR 2370) and solicited comments regarding these proposed amendments. The comment

period on the proposal closed on February 20, 1987.

As part of the settlement agreement, TCA and EPA jointly requested the U.S. Court of Appeals for the Fourth Circuit in *Tanners' Council of America, Inc.* v. *EPA* to stay the effectiveness of the sections of 40 CFR Part 425 which EPA had agreed to propose to amend, pending final action by EPA on each proposed amendment. On February 22, 1985, the Court entered an Order staying the following sections of the regulation promulgated on November 23, 1982: § 425.02(a); § 425.03; § 425.11, except for the pH limitations; § 425.15(b); § 425.31, except for the pH limitation; the pH limitation in § 425.35(a); § 425.35(b); § 425.41, except for the pH limitation; § 425.44, except for the pH limitation; § 425.51, except for the pH limitation; § 425.61, except for the pH limitation; § 425.64, except for the pH limitation; § 425.71, except for the pH limitation; § 425.91, except for the pH limitation; and § 425.95(b). EPA is amending these sections in this final rule in accord with the settlement agreement.

All effluent limitations guidelines and standards contained in the final leather tanning and finishing industry regulation promulgated on November 23, 1982, which are not specifically listed in these amendments to the regulation, were not stayed by the Order entered by the Court. In addition, EPA is not deleting or modifying any of the effluent limitations guidelines and standards not affected by the settlement agreement or Order.

III. Amendments to the Leather Tanning and Finishing Point Source Category Regulation

In the final rule, EPA is amending Part 425 in accordance with the settlement agreement to (1) allow use of a new alternative sulfide analytical method, (2) clarify the procedures to be followed by a POTW when changed circumstances justify application of sulfide pretreatment standards where previously waived, or a certification by a POTW that the discharge of sulfide will not interfere with the operation of the POTW, (3) revise BPT effluent limitations guidelines and NSPS standards based on corrected and more complete information, and (4) allow the small tannery exemption without restriction as to the number of working days per week. These amendments are discussed in this section.

A. Alternative Sulfide Analytical Method

1. *TCA Concerns and EPA Response.* EPA had promulgated a categorical sulfide pretreatment standard and required all facilities to use the Society of Leather Trades' Chemists' "Method for Sulfide Analysis SLM 4/2" in which the sulfide solution is titrated with standard potassium ferricyanide solution in the presence of a ferrous dimethylglyoxime ammonia complex (§ 425.03). TCA and some industry members conducted testing to determine the validity of this analytical method. These test results revealed the following problems with the SLM 4/2 method.

a. The method described in the previously promulgated § 425.03(c)(1) provides for the removal of the suspended matter by rapid filtration through *either* glass wool *or* coarse filter paper. The lack of standardization of glass wool could potentially cause inconsistent analytical results.

b. The titrant equivalence statement as set forth in the previously promulgated § 425.03(c)(4) will lead to confusion in the reporting of analytical results because it expresses the results in terms of sodium sulfide instead of sulfide upon which the pretreatment standards are based.

c. Colored tannery wastewater, especially vegetable tanners' wastewater, makes it difficult to detect the destruction of the pink color at the end point. Additionally, certain simple phenolic substances (pyrogallol and pyrocatechol), which are model substances for the nontannins of vegetable tanning materials, consume the ferricyanide titrant under the prescribed SLM 4/2 conditions. These interfering substances may yield false results.

In response to the first problem, EPA is amending the promulgated approved method to delete glass wool as an alternative rapid filtration medium. EPA is also amending the previously promulgated method to specify use of a coarse filter paper. In response to the second problem, EPA is amending the method to express the results of the titrant equivalence statement in terms of mg. per liter of sulfide which is the basis for the pretreatment standards.

In response to the third problem, EPA and TCA conducted a cooperative sampling and analytical methods development program for vegetable tanning wastewaters using both the promulgated SLM 4/2 method and a method suggested by TCA, the modified Monier-Williams method. Raw and pretreated wastewaters were collected at seven tanneries, including two vegetable tanning tanneries, for analysis by EPA and TCA. The analytical data showed that the modified Monier-Williams method was able to measure sulfide in vegetable tannery wastewater when wastewater color prevented detection of the end point color change using the SLM 4/2 procedure. The data also showed that the method produced considerably better spike recoveries than the SLM 4/2 procedure. These data and EPA's summary of the results are part of the record of this rulemaking. The modified Monier-Williams method, thus, is an acceptable procedure for pretreatment standard compliance monitoring in the leather tanning and finishing industry. EPA is amending Part 425 by including the modified Monier-Williams method as a sulfide analytical procedure for facilities with vegetable tanning wastewaters and as an alternative sulfide analytical procedure for other tanneries.

2. *Amendment to § 425.02 General Definitions.* EPA is making two minor changes to the general definitions sections to address analytical methods issues. EPA is defining "sulfide" in § 425.02(a) as total sulfide as measured by either the potassium ferricyanide titration procedure ("Method for Sulfide Analysis SLM 4/2") in Appendix A to Part 425 or the modified Monier-Williams procedure described in Appendix B to Part 425. This is a technical change required to allow use of the new procedures. These two analytical procedures are moved to appendixes to the final rule for the convenience of the user.

Under the settlement agreement, EPA agreed to propose that the Minimum Reportable Concentration (MRC) should be determined periodically in each of the two sulfide analytical procedures by each participating laboratory in accordance with the procedures specified in "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA–600/4–82–057, July 1982, EMSL, Cincinnati, OH 45268. The term MRC is not explicitly defined in the settlement agreement or in the 1982 "Methods" document cited. Rather, the 1982 "Methods" document describes the Method Detection Limit (MDL) procedure which is also described in Appendix B to 40 CFR Part 136. EPA interprets MRC to be synonymous with the MDL procedure described in Appendix A to the 1982 "Methods" document and Appendix B to 40 CFR Part 136. Therefore, the MDL procedure is used as the MRC method. For the convenience of the user, the definition and procedure for the determination of the Method Detection Limit is contained in Appendix C to Part 425.

3. *Amendment to § 425.03 Sulfide Analytical Methods.* The previously promulgated § 425.03 describes the potassium ferricyanide titration (SLM 4/2) method in detail. As explained above, this method and the modified Monier-

Williams method are described in new appendixes to Part 425. Section 425.03 is amended to provide that the potassium ferricyanide method is approved for analysis of sulfide except for those tanneries covered by Subpart C (Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory). For these tanneries, the modified Monier-Williams method is the approved method; tanneries in other subcategories may also use the modified Monier-Williams method to detect sulfide.

3. Applicability of Sulfide Pretreatment Standard

1. *TCA Concern and EPA Response.* The previously promulgated § 425.04 provided that, until October 13, 1983, POTWs may take steps to certify that sulfide pretreatment standards do not apply. (40 CFR 425.04(c)). The previous rule did not provide a procedure by which POTWs could revoke a previously issued certification of inapplicability. TCA criticized the provision of § 425.04 under which, after October 13, 1983, a POTW is precluded from certifying that the sulfide pretreatment standards should not apply to a particular facility. TCA noted that there may be changed circumstances after that deadline under which it may still be appropriate for a POTW to allow such a certification. EPA agrees that there may be changed circumstances after the October 13, 1983 deadline which would justify both the issuance and revocation of a certification as to the applicability or inapplicability of the sulfide pretreatment standards, and is amending § 425.04 to permit a POTW to initiate proceedings, revoke, or issue certification on the inapplicability of the sulfide pretreatment standards subsequent to the October 13, 1983 deadline.

2. *Amendment to § 425.04 Applicability of Sulfide Pretreatment Standard.* EPA is amending § 425.04 by adding paragraphs (d)(1), (d)(2), and (e) to § 425.04. The amended §§ 425.04(d) (1) and (2) provide a procedure for POTWs to revoke a previously issued certification of inapplicability of the sulfide pretreatment standard. If, as a result of this revocation, the sulfide pretreatment standards are to be applicable to an indirect discharger, the discharger will be required to comply with these standards no later than 18 months from the publication date of the Federal Register notice announcing the revocation.

EPA is amending § 425.04(e) which authorizes POTWs to initiate proceedings to certify that sulfide pretreatment standards should not apply to specified facilities after October 13, 1983. Under this subsection, a POTW may determine that circumstances have arisen since that date that justify a determination that the sulfide pretreatment requirements should not apply. The POTW may propose to certify that the pretreatment standard does not apply and may initiate proceedings to this end. This certification would be governed by the existing certification procedures and time intervals in §§ 425.04 (b) and (c).

C. Changes to Effluent Limitations Guidelines and Standards Based on Revised Water Use Ratios, pH Pretreatment Standard, and Changes to the Small Tannery Exemption

1. *Changes to Effluent Limitations Guidelines and Standards.* TCA criticized EPA's median flow ratios for three subcategories (Subparts D, F, and I) alleging that the flow ratios developed by EPA were erroneous based on new water use data submitted by TCA. EPA had developed median flow ratios for each subcategory to derive production-based effluent limitations for direct discharging facilities.

After reviewing the revised data base for the subcategory median and new source water use ratios, EPA determined that changes should be made in the median water use ratios for a number of subcategories. Table 1 reflects the revisions in median water use ratios for existing plants as well as revisions in the number of plants in the subcategory data bases and the number of plants achieving median water use ratios. Table 2 reflects the revisions in the new source water use ratios and in the number of plants achieving these water use ratios.

TABLE 1

Subcategory	Median water use ratio (gals/lb)	Plants in data base	
		Number of plants in subcategory data base	Number of plants in data base achieving water use ratios
1	6.6	34	17
2	5.8	4	3
3	4.8	11	6
4	6.3	7	4
5	5.7	10	5
6	2.3	3	2
7	10.7	2	1
8	5.0	2	1
9	4.1	6	3

TABLE 2

Subcategory	New source water use ratio (gals/lb)	Number of Plants in data base achieving water use ratio
1	4.3	6
2	4.9	1
3	4.2	4
4	4.6	2
5	3.8	3
6	2.1	1
7	9.4	1
8	4.1	1
9	2.5	2

As a result of the review of EPA's data base, supplemented by information supplied by TCA, and corrections to identified errors in the interpretation of existing water use data, the subcategory median and new source water use ratios used to establish BPT and NSPS limitations and standards were recalculated. These amendments will result in BPT effluent limitations guidelines for Subparts A, D, F, G, and I that are less stringent than those in the final regulation (47 FR 52848, November 23, 1982), while the BPT limitations for Subparts C and E will be more stringent than those in the final regulation. NSPS for subparts D and F will be less stringent than those in the final regulation. The Supplemental Development Document for Effluent Limitations Guidelines and Standards for the Leather Tanning and Finishing Industry Point Source Category" documents the basis for the changes to effluent limitations guidelines and standards based on revised water use ratios.

2. *PSES for pH.* EPA established a pH range of 7.0 to 10.0 for leather tanneries with alkaline wastestreams in the 1982 final regulation. EPA established 10 as the uppermost level of the pH range because of the solubility of chromium at pH levels in excess of 10. TCA argued that EPA should establish a waiver procedure to allow relief for tanneries with a pH in excess of 10 in certain circumstances.

After careful consideration, EPA concluded that a waiver from the higher standard would be unduly complicated. In response to TCA's request, EPA did agree to delete the higher (alkaline) pH standard for vegetable tanneries in Subpart C only (§ 425.35(a)). EPA is less concerned about the chromium solubility for vegetable tanneries since these tanneries typically discharge low levels of chromium. The higher pH pretreatment standards for the other subcategories will remain as

promulgated because they will reduce the probability of chromium solubility. The low (acid) pH standard has been retained to ensure that the formation of hydrogen sulfide gas is minimized.

3. *Small Tannery Exemption.* The pretreatment standards for the leather tanning and finishing industry provide that chromium standards are now inapplicable to small plants in Subparts A, C, or I which discharge to publicly owned treatment works if these plants produce less than a specified number of hides/splits per day and a specified weight of hides/splits per year in their respective subcategories. In a correction notice dated June 30, 1983, the Agency specified the annual weight basis as well as the number of working days per year underlying the specified hide and split limits (48 FR 30115). Subsequent to discussing this matter with TCA, the Agency has reconsidered this issue. The Agency is deleting all references to the annual weight basis and the number of working days per year underlying the specified hide and split limits. Accordingly, tanneries with a seven-day workweek could qualify for the exemption.

Therefore, EPA is amending Subpart A (§ 425.15(b)), Subpart C (§ 425.35(b)), and Subpart I (§ 425.95(b)) by deleting references to the annual weight basis and the number of working days per year that were specified in the correction notice (48 FR 30115, June 30, 1983) to the final regulation for the small tannery exemption from pretreatment standards for chromium. The Agency has not, however, made any changes to the underlying exemption based on numbers of hides or splits per day.

IV. Clarifications

In addition to the amendments discussed in Section III, EPA is clarifying several issues: Changes in subcategorization, classification of tanneries with mixed subcategory operations, and multiple outfalls. These issues are addressed below.

A. Changes in Subcategorization

Under 40 CFR 403.6(a) of the general pretreatment regulations, an existing industrial user or a POTW may seek written certification from the Approval Authority as to whether the industrial user falls within a particular subcategory of a promulgated categorical pretreatment standard. Existing users must make the request within 60 days after the effective date of a pretreatment standard for a subcategory under which the user may be included or within 60 days after the **Federal Register** notice announcing the availability of the technical document for the subcategory. New sources must request this certification prior to commencing discharge.

Persons have inquired as to the procedures that existing leather tanning facilities should use to seek an Agency determination if the facility decides to change its subcategorization subsequent to the expiration of the 60-day deadline under 40 CFR 403.6(a). In fact, 40 CFR 403.6(a) does not preclude leather tanning and finishing facilities from changing operations which would in turn automatically change their subcategorization status. Facilities that are planning to change their subcategorization status and are unsure which subcategory they will fall into should request written certification from the Approval Authority as to whether the facility falls within a particular subcategory prior to commencing discharges which would fall within that subcategory.

B. Tanneries With Mixed Subcategory Operations

The pretreatment standards for chromium are not applicable to plants with mixed subcategory operations if the greatest part of the plant's production is in either subcategory 1, 3, or 9 and if the total plant production is less than the specified number of hides or splits per day for the particular subcategory. The intent of this exemption is to exclude small plants from the chromium pretreatment standards, not to exclude processing operations at medium or large plants.

C. Multiple Outfalls

Most indirect discharging plants combine their process wastewaters and discharge them all through one outfall. The Agency has costed this approach by including costs for internal plant piping for wastewater collection as well as contingency costs to account for any unforeseen site specific costs.

If, however, an indirect discharging plant does not choose to combine its process wastewaters for treatment and to discharge them through one outfall, a composite sampling of the multiple outfalls could be acceptable. A single composite sample for multiple outfalls must be comprised of representative process wastewaters from each outfall. A composite sample must be combined in proportions determined by the ratio of process wastewater flow in each outfall to the total flow of process wastewaters discharged through all outfalls. If nonprocess wastewater is combined with process wastewater or if a plant has operations in more than one subcategory, the plant would have to use the "combined wastestream formula" in 40 CFR 403.6(e) to make this calculation. Flow measurements for each outfall must be representative of the plant's operation. An analysis of the total sample would then be compared to the applicable categorical standard to determine compliance.

V. Environmental Impact of Amendments

EPA estimates that the industry-wide direct BPT discharge of conventional and toxic pollutants under the final leather tanning and finishing regulation as amended by these amendments will increase less than four percent by weight as reflected in Table 3.

TABLE 3.—COMPARISON OF INDUSTRY-WIDE DIRECT BPT DISCHARGES OF CONVENTIONAL AND TOXIC POLLUTANTS UNDER FINAL AND AMENDED REGULATIONS FOR LEATHER TANNING AND FINISHING

Pollutant	Discharge (lbs/yr)			Percent increase
	Final [1] regulation	Amended regulation	Increase	
BOD_5	913,000	949,000	36,000	3.9
TSS	1,330,000	1,380,000	50,000	3.8
Oil & grease	381,000	392,000	11,000	2.9
Total chromium	19,300	19,900	600	3.1

[1] Fir al regulation, 47 FR 52848, November 23, 1982.

VI. Economic Impact of Amendments

These amendments will not alter the recommended technologies for complying with the leather tanning and finishing regulation. The Agency considered the economic impact of the regulation when the regulation was previously promulgated (see 47 FR 52848). These amendments will not alter the determinations with respect to the economic impact to leather tanning and finishing facilities.

VII. Public Participation and Response to Comments

This regulation was proposed on January 21, 1987 (52 FR 2370). The comment period ended on February 20, 1987. Only one commenter, the Leather Industries of America, Inc. ("LIA"), formerly Tanners' Council of America, Inc., the principal trade association of the United States leather industry, submitted comments pointing out a few typographical errors in the proposed regulation to modify the effluent limitations guidelines and pretreatment standards for the leather tanning and finishing point source category. EPA has, in today's final rule, corrected these minor typographical errors. In their comments, LIA stated that, subject to these minor comments, the proposed rulemaking, if finally adopted, would substantially comply with the requirements of the settlement agreement. Moreover, in general, LIA voiced full support for the Agency's amended regulatory and preamble language as set forth in the proposal.

VIII. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses on major regulations. Major rules are defined as those which result in an annual cost of $100 million or more, or meet other economic impact criteria, such as cause major increases in costs and/or prices, or significant adverse effects on the ability of domestic producers to compete with foreign enterprises, or on competition, investment, productivity, or innovations. The 1982 final regulation for the leather tanning and finishing industry was not a major rule according to these definitions, and, therefore, did not require a formal regulatory impact analysis. This rulemaking also satisfies the requirements of the Executive Order for a non-major rule.

IX. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. In the preamble to the 1982 final rule, EPA concluded that significant impacts on small entities had been eliminated by exempting small tanners from chromium PSES. That conclusion is equally applicable to these amendments. The Agency is not, therefore, preparing a formal analysis for these amendments.

X. OMB Review

This final rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room 2904, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 425

Leather, Leather Tanning and Finishing, Water Pollution Control, Wastewater Treatment and Disposal.

Dated: March 2, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, EPA is amending Part 425, Subchapter N, Chapter I, of Title 40, Code of Federal Regulations, as follows:

PART 425—[AMENDED]

1. The authority citation for Part 425 is revised to read as follows:

Authority: Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), 1318, and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

2. Section 425.02 is amended by revising paragraph (a) to read as follows:

§ 452.02 General definitions.

* * * * *

(a) "Sulfide" shall mean total sulfide as measured by the potassium ferricyanide titration method described in Appendix A or the modified Monier-Williams method described in Appendix B.

* * * * *

3. Section 425.03 is amended by revising it to read as follows:

§ 425.03 Sulfide analytical methods and applicability.

(a) The potassium ferricyanide titration method described in Appendix A to Part 425 shall be used whenever practicable for the determination of sulfide in wastewaters discharged by plants operating in all subcategories except the hair save or pulp, non-chrome tan, retan-wet finish subcategory (Subpart C, *see* § 425.30). In all other cases, the modified Monier-Williams method as described in Appendix B to Part 425 shall be used as an alternative to the potassium ferricyanide titration method for the determination of sulfide in wastewaters discharged by plants operating in all subcategories except Subpart C.

(b) The modified Monier-Williams method as described in Appendix B to Part 425 shall be used for the determination of sulfide in wastewaters discharged by plants operating in the hair save or pulp, non-chrome tan, retan-wet finish subcategory (Subpart C, *see* § 425.30).

4. Section 425.04 is amended by adding paragraphs (d) and (e) to read as follows:

§ 425.04 Applicability of sulfide pretreatment standards.

* * * * *

(d) (1) If, after EPA and the POTW have determined in accordance with this section that the sulfide pretreatment standards of this Part are not applicable to specified facilities, a POTW then determines that there have been changed circumstances (including but not limited to changes in the factors specified in paragraph (b) of this section) which justify application of the sulfide pretreatment standards, the POTW shall revoke the certification submitted under paragraph (c) of this section. The POTW and EPA shall then adhere to the general procedures and time intervals contained in paragraph (c) of this section in order to determine whether the sulfide pretreatment standards contained in this Part are applicable.

(2) If pursuant to paragraph (d)(1) of this section, the sulfide pretreatment standards of this Part are applicable to a specified facility, the indirect discharger shall comply with the sulfide pretreatment standards no later than 18 months from the date of publication of the **Federal Register** notice identifying the facility.

(e) At any time after October 13, 1983, if a POTW determines that there have been changed circumstances (including but not limited to changes in the factors specified in paragraph (b) of this

section), it may initiate proceedings contained in paragraph (c) of this section to determine that the sulfide pretreatment standards of this Part shall not be applicable. The POTW and EPA shall follow the procedures and time intervals contained in paragraph (c) of this section to make this determination. A final determination that the sulfide pretreatment standards are not applicable must be made prior to the discharge of sulfide not in accordance with the standards set forth in this Part.

4a. Section 425.05 is revised to read as follows:

§ 425.05 Compliance dates.

The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSES) is the date the new source commences discharge. The compliance date for BPT effluent limitations and guidelines and pretreatment standards for existing sources to no later than March 31, 1989.

Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory

5. Section 425.11 is amended by revising the table of BPT limitations to read as follows:

§ 425.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds of raw material	
BOD5	9.3	4.2
TSS	13.4	6.1
Oil & Grease	3.9	1.7
Total Chromium	0.24	0.09
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0

6. Section 425.15 is amended by revising paragraph (b) to read as follows:

§ 425.15 Pretreatment standards for existing sources (PSES).

* * * * *

(b) Any existing source subject to this subpart which processes less than 275 hides/day shall comply with § 425.15(a), except that the total chromium limitations contained in § 425.15(a) do not apply.

Subpart C—Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory

7. Section 425.31 is amended by revising the table of BPT limitations to read as follows:

§ 425.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	6.7	3.0
TSS	9.7	4.4
Oil & Grease	2.8	1.3
Total Chromium	0.17	0.06
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0

8. Section 425.35 is amended by revising the table of PSES standards in paragraph (a) and revising pagaraph (b) to read as follows:

§ 425.35 Pretreatment standards for existing sources (PSES).

(a) * * *

Pollutant or pollutant property	PSES limitations	
	Maximum for any 1 day	Maximum for monthly average
	Milligrams per liter (mg/l)	
Sulfide	24	--
Total Chromium	12	8
pH	(1)	(1)

[1] Not less than 7.0.

(b) Any existing source subject to this subpart which processes less than 350 hides/day shall comply with § 425.35(a), except that the Total Chromium limitations contained in § 425.35(a) do not apply.

Subpart D—Retan-Wet Finish-Sides Subcategory

9. Section 425.41 is amended by revising the section heading and the table of BPT limitations to read as follows:

§ 425.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	8.9	4.0
TSS	12.8	5.8
Oil & Grease	3.7	1.7
Total Chromium	0.23	0.08
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

10. Section 425.44 is amended by revising the table of NSPS to read as follows:

§ 425.44 New source performance standards (NSPS).

* * * * *

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	6.5	2.9
TSS	9.3	4.3
Oil & Grease	2.7	1.2
Total Chromium	0.17	0.06
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

Subpart E—No Beamhouse Subcategory

11. Section 425.51 is amended by revising the table of BPT limitations to read as follows:

§ 425.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	8.0	3.6
TSS	11.6	5.3
Oil & Grease	3.4	1.5
Total Chromium	0.21	0.08
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

Subpart F—Through-the-Blue Subcategory

12. Section 425.61 is amended by revising the table of BPT limitations to read as follows:

§ 425.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	3.2	1.5
TSS	4.7	2.1
Oil & Grease	1.4	0.61
Total Chromium	0.08	0.03
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

13. Section 425.64 is amended by revising the table of NSPS to read as follows:

§ 425.64 New source performance standards (NSPS).

* * * * *

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	3.0	1.3
TSS	4.3	1.9
Oil & Grease	1.2	0.55
Total Chromium	0.08	0.03
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

Subpart G—Shearling Subcategory

14. Section 425.71 is amended by revising the table of BPT limitations to read as follows:

§ 425.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	15.0	6.8
TSS	21.7	9.9
Oil & Grease	6.3	2.8
Total Chromium	0.39	0.14
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

Subpart I—Retan-Wet Finish-Splits Subcategory

15. Section 425.91 is amended by revising the table of BPT limitations to read as follows:

§ 425.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	5.8	2.6
TSS	8.3	3.8
Oil & Grease	2.4	1.1
Total Chromium	0.15	0.05
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

16. Section 425.95 is amended by revising paragraph (b) to read as follows:

§ 425.95 Pretreatment standards for existing sources (PSES).

* * * * *

(b) Any existing source subject to this subpart which processes less than 3,600 splits/day shall comply with § 425.95(a) except that the total chromium limitations contained in § 425.95(a) do not apply.

17. Part 425 is amended by adding Appendix A to read as follows:

Appendix A to Part 425—Potassium Ferricyanide Titration Method

Source

The potassium ferricyanide titration method is based on method SLM 4/2 described in "Official Method of Analysis," Society of Leather Trades' Chemists, Fourth Revised Edition, Redbourn, Herts., England, 1965.

Outline of Method

The buffered sulfide solution is titrated with standard potassium ferricyanide solution in the presence of a ferrous dimethylglyoxime ammonia complex. The sulfide is oxidized to sulfur. Sulfite interferes and must be precipitated with barium chloride. Thiosulfate is not titrated under the conditions of the determination (Charlot, "Ann. chim. anal.", 1945, 27, 153; Booth; "J. Soc. Leather Trades' Chemists," 1956, 40, 238).

Apparatus

Burrette, 10 ml.

Reagents

1. Preparation of 0.02N potassium ferricyanide: Weigh to the nearest tenth of a gram 6.6 g. of analytical reagent grade potassium ferricyanide and dissolve in 1 liter distilled water. Store in an amber bottle in the dark. Prepare fresh each week.

2. Standardization of ferricyanide solution: Transfer 50 ml. of solution to a 250 ml. Erlenmeyer flask. Add several crystals of potassium iodide (about 1 g.), mix gently to dissolve, add 1 ml. of 6N hydrochloric acid, stopper the flask, and swirl gently. Let stand for two minutes, add 10 ml. of a 30 percent zinc sulfate solution, and titrate the mixture containing the gelatinous precipitate with standardized sodium thiosulfate or phenylarsine oxide titrant in the range of 0.025–0.050N Add 1 ml. of starch indicator solution after the color has faded to a pale yellow, and continue the titration to the disappearance of the blue color. Calculate the normality of the ferricyanide solution using the equation:

$$\text{Normality of Potassium Ferricyanide } [K_3Fe(CN)_6] = \frac{(\text{ml of thiosulfate added})(\text{normality of thiosulfate})}{\text{Ml of } K_3Fe(CN)_6}$$

3. Preparation of 6M ammonium chloride buffer, pH 9.3: Dissolve 200 g. ammonium chloride in approximately 500 ml. distilled water, add 200 ml. 14M reagent grade ammonium hydroxide and make up to 1 liter with distilled water. The buffer should be prepared in a hood. Store in a tightly stoppered container.

4. Preparation of 0.05M barium chloride solution: Dissolve 12–13 g. barium chloride dihydrate in 1 liter of distilled water.

5. Preparation of ferrous dimethylglyoxime indicator solution: Mix 10 ml. 0.6 percent ferrous sulfate, 50 ml. 1 percent dimethylglyoxime in ethanol, and 0.5 ml. concentrated sulfuric acid.

6. Preparation of stock sulfide standard, 1000 ppm: Dissolve 2.4 g. reagent grade sodium sulfide in 1 liter of distilled water. Store in a tightly stoppered container. Diluted working standards must be prepared fresh daily and their concentrations determined by EPA test procedure 376.1 (see 40 CFR 136.3, Table IB, parameter 66 (49 FR 43234, October 26, 1984, with correction notice at 50 FR 690, January 4, 1985)) immediately prior to use.

7. Preparation of 10N NaOH: Dissolve 400 g. of analytical reagent grade NaOH in 1 liter distilled water.

Sample Preservation and Storage

Samples are to be field filtered (gravity or pressure) with coarse filter paper (Whatman 4 or equivalent) immediately after collection. Filtered samples must be preserved by adjustment to pH > 12 with 10N NaOH. Sample containers must be covered tightly and stored at 4 °C until analysis. Samples must be analyzed within 48 hours of collection. If these procedures cannot be achieved, it is the laboratory's responsibility to institute quality control procedures that will provide documentation of sample integrity.

Procedure

1. Transfer 100 ml. of sample to be analyzed, or a suitable portion containing not more than 15 mg. sulfide supplemented to 100 ml. with distilled water, to a 250 ml. Erlenmeyer flask.

2. Adjust the sample to pH 8.5–9.5 with 6N HCl.

3. Add 20 ml. of 6M ammonium chloride buffer (pH 9.3), 1 ml. of ferrous dimethylglyoxime indicator, and 25 ml. of 0.05M barium chloride. Mix gently, stopper, and let stand for 10 minutes.

4. After 10 minutes titrate with standardized potassium ferricyanide to disappearance of pink color. The endpoint is reached when there is no reappearance of the pink color after 30 seconds.

Calculation and Reporting of Results.

$$1.\ \text{mg./l. sulfide} = \frac{A \times B \times 16{,}000}{\text{vol. in ml. of sample titrated}}$$

where A = volume in ml. of potassium ferricyanide solution used,
and B = normality of potassium ferricyanide solution.

2. Report results to two significant figures.

Quality Control

1. Each laboratory that uses this method is required to operate a formal quality control program. The minimum requirements of this program consist of an initial demonstration of laboratory capability and the analysis of replicate and spiked samples as a continuing check on performance. The laboratory is required to maintain performance records to define the quality of data that is generated. Ongoing performance checks must be compared with established performance criteria to determine if the results of analyses are within precision and accuracy limits expected of the method.

2. Before performing any analyses, the analyst must demonstrate the ability to generate acceptable precision and accuracy with this method by performing the following operations.

(a) Perform four replicate analyses of a 20 mg./l. sulfide standard prepared in distilled water (see paragraph 6 under "Reagents" above).

(b)(1) Calculate clean water precision and accuracy in accordance with standard statistical procedures. Clean water acceptance limits are presented in paragraph 2(b)(2) below. These criteria must be met or exceeded before sample analyses can be initiated. A clean water standard must be analyzed with each sample set and the established criteria met for the analysis to be considered under control.

(2) Clean water precision and accuracy acceptance limits: For distilled water samples containing from 5 mg./l. to 50 mg./l. sulfide, the mean concentration from four replicate analyses must be within the range of 50 to 110 percent of the true value.

3. The Method Detection Limits (MDL) should be determined periodically by each participating laboratory in accordance with the procedures specified in "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA–660/4–82–057, July 1982, EMSL, Cincinnati, OH 45268. For the convenience of the user, these procedures are contained in Appendix C to Part 425.

4. A minimum of one spiked and one duplicate sample must be performed for each analytical event, or five percent spikes and five percent duplicates when the number of samples per event exceeds twenty. Spike levels are to be at the MDL (see paragraph 3 above for MDL samples) and at x where x is the concentration found if in excess of the MDL. Spike recovery must be 40 to 120 percent for the analysis of a particular matrix type to be considered valid. If a sample or matrix type provides performance outside these acceptance limits, the analyses must be repeated using the modified Monier-Williams procedures described in Appendix B to this Part.

5. Report results in mg./liter. When duplicate and spiked samples are analyzed, report all data with the sample results.

18. Part 425 is amended by adding Appendix B to read as follows:

Appendix B to Part 425—Modified Monier-Williams Method

Outline of Method

Hydrogen sulfide is liberated from an acidified sample by distillation and purging with nitrogen gas (N_2). Sulfur dioxide interference is removed by scrubbing the nitrogen gas stream in a pH 7 buffer solution. The sulfide gas is collected by passage through an alkaline hydrogen peroxide scrubbing solution in which it is oxidized to sulfate. Sulfate concentration in the scrubbing solution is determined by either EPA gravimetric test procedure 375.3 or EPA turbidimetric test procedure 375.4 (see 40 CFR 136.3, Table IB, parameter 65 (49 FR 43234, October 26, 1984, and correction notice at 50 FR 690, January 4, 1985)).

Apparatus *

(See Figure 1.) * Catalogue numbers are given only to provide a more complete description of the equipment necessary, and do not constitute a manufacturer or vendor endorsement.

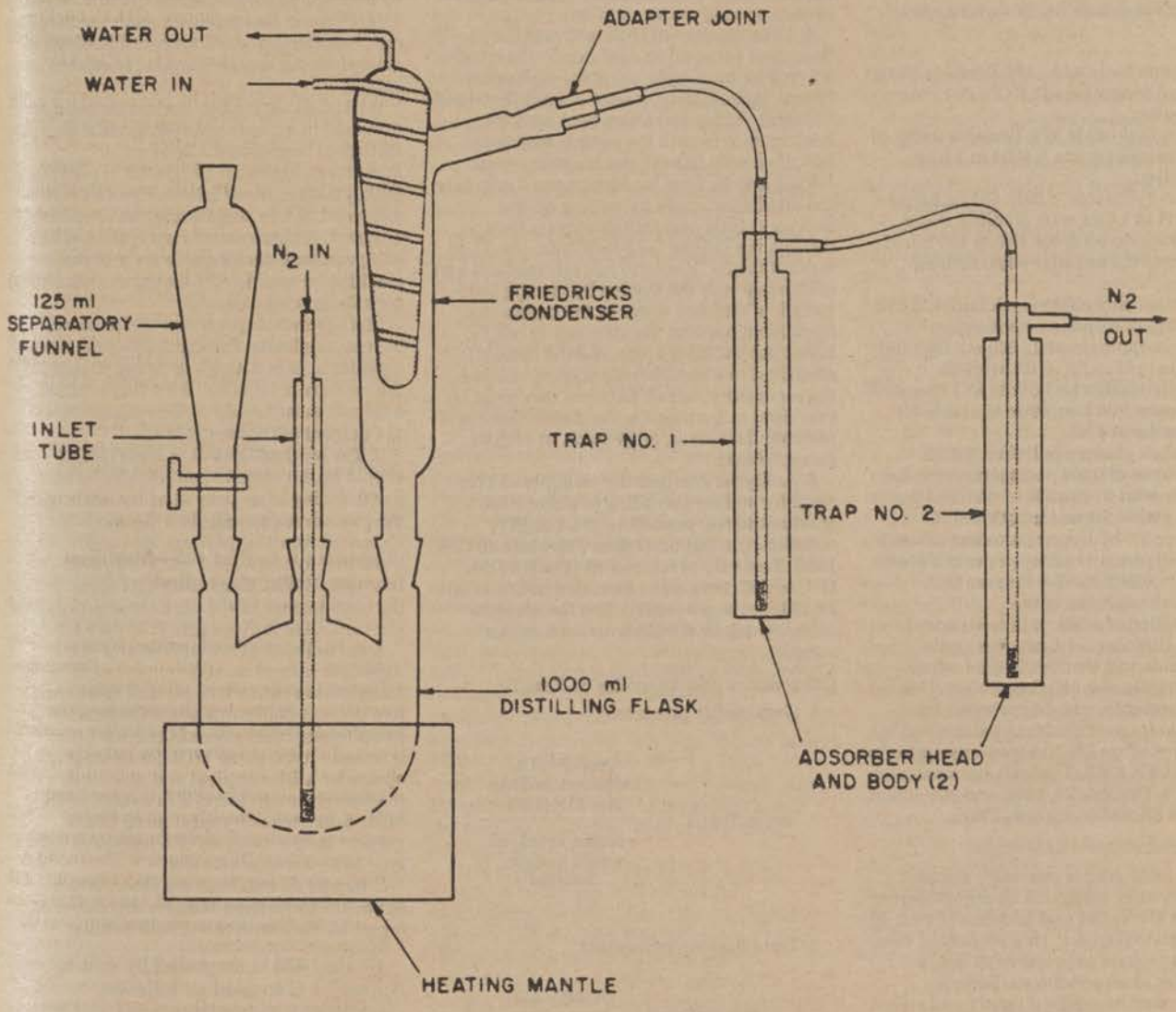
Heating mantel and control (VWR Cat. No. 33752–464)

1000 ml. distilling flask with three 24/40 joints (VWR Cat. No. 29280–215)

Friedricks condenser with two 24/40 joints (VWR Cat. No. 23161–009)

BILLING CODE 6560-50-M

FIGURE 1
EQUIPMENT ASSEMBLY



BILLING CODE 6560-50-C

125 ml. separatory funnel with 24/40 joint (VWR Cat. No. 30357–102)
Inlet tube with 24/40 joint (VWR Cat. No. 33057–105)
Adapter joint 24/40 to 19/38 (VWR Cat. No. 62905–26)
Adsorber head (2 required) (Thomas Cat. No. 9849–R29)
Adsorber body (2 required) (Thomas Cat. No. 9849–R32)
Laboratory vacuum pump or water aspirator

Reagents

1. Potassium hydroxide, 6N: Dissolve 340 g. of analytical reagent grade KOH in 1 liter distilled water.

2. Sodium hydroxide, 6N: Dissolve 240 g. of analytical reagent grade NaOH in 1 liter distilled water.

3. Sodium hydroxide, 0.03N: Dilute 5.0 ml. of 6N NaOH to 1 liter with distilled water.

4. Hydrochloric acid, 6N: Dilute 500 ml. of concentrated HCl to 1 liter with distilled water.

5. Potassium phosphate stock buffer, 0.5M: Dissolve 70 g. of monobasic potassium phosphate in approximately 800 ml. distilled water. Adjust pH to 7.0 ± 0.1 with 6N potassium hydroxide and dilute to 1 liter with distilled water. Stock solution in stable for several months at 4 °C.

6. Potassium phosphate buffer, 0.05M: Dilute 1 volume of 0.5M potassium phosphate stock buffer with 9 volumes of distilled water. Solution is stable for one month at 4 °C.

7. Alkaline 3% hydrogen peroxide: Dilute 1 volume of 30 percent hydrogen peroxide with 9 volumes of 0.03N NaOH. Prepare this solution fresh each day of use.

8. Preparation of stock sulfide standard, 1000 ppm.: Dissolve 2.4 g. reagent grade sodium sulfide in 1 liter of distilled water. Store in a tightly stoppered container. Diluted working standards must be prepared fresh daily and their concentrations determined by EPA test procedure 376.1 immediately prior to use (see 40 CFR 136.3, Table IB, parameter 66 (49 FR 43234, October 26, 1984, and correction notice at 50 FR 690, January 4, 1985)).

Sample Preservation and Storage

Preserve unfiltered wastewater samples immediately after collection by adjustment to pH>9 with 6N NaOH and addition of 2 ml. of 2N zinc acetate per liter. This amount of zinc acetate is adequate to preserve 64 mg./l. sulfide under ideal conditions. Sample containers must be covered tightly and stored at 4 °C until analysis. Samples must be analyzed within seven days of collection. If these procedures cannot be achieved, it is the laboratory's responsibility to institute quality control procedures that will provide documentation of sample integrity.

Procedure (See Figure 1 for apparatus layout.)

1. Place 50 ml. of 0.05M pH 7.0 potassium phosphate buffer in Trap No. 1.

2. Place 50 ml. of alkaline 3 percent hydrogen peroxide in Trap No. 2.

3. Sample introduction and N_2 prepurge: Gently mix sample to be analyzed to resuspend settled material, taking care not to aerate the sample. Transfer 400 ml. of sample, or a suitable portion containing not more than 20 mg. sulfide diluted to 400 ml. with distilled water, to the distillation flask. Adjust the N_2 flow so that the impingers are frothing vigorously, but not overflowing. Vaccum may be applied at the outlet of Trap No. 2 to assist in smooth purging. The N_2 inlet tube of the distillation flask must be submerged deeply in the sample to ensure efficient agitation. Purge the sample for 30 minutes without applying heat. Test the apparatus for leaks during the prepurge cycle (Snoop or soap water solution).

4. Volatilization of H_2S: Interrupt the N_2 flow (and vacuum) and introduce 100 ml. of 6N HCl to the sample using the separatory funnel. Immediately resume the gas flow (and vacuum). Apply maximum heat with the heating mantle until the sample begins to boil, then reduce heat and maintain gentle boiling and N_2 flow for 30 minutes. Terminate the distillation cycle by turning off the heating mantle and maintaining N_2 flow through the system for 5 to 10 minutes. Then turn off the N_2 flow (and release vacuum) and *cautiously* vent the system by placing 50 to 100 ml. of distilled water in the separatory funnel and opening the stopcock carefully. When the bubbling stops and the system is equalized to atmospheric pressure, remove the separatory funnel. Extreme care must be exercised in terminating the distillation cycle to avoid flash-over, draw-back, or violent steam release.

5. Analysis: Analyze the contents of Trap No. 2 for sulfate according to either EPA gravimetric test procedure 375.3 or EPA turbidimetric test procedure 375.4 (see 40 CFR 136.3, Table IB, parameter 65 (49 FR 43234, October 26, 1984, and correction notice at 50 FR 690, January 4, 1985)). Use the result to calculate mg./l. of sulfide in wastewater sample.

Calculations and Reporting of Results

1. Gravimetric procedure:

$$\text{mg sulfide/l.} = \frac{(\text{mg. } BaSO_4 \text{ collected in Trap No. 2}) \times (137)}{\text{volume in ml. of waste sample distilled}}$$

2. Turbidimetric procedure:

$$\text{mg. sulfide/l.} = \frac{A \times B \times 333}{C}$$

where A = mg./l. of sulfate in Trap No. 2
B = liquid volume in liters in Trap No. 2
and C = volume in ml. of waste sample distilled

3. Report results to two significant figures.

Quality Control

1. Each laboratory that uses this method is required to operate a formal quality control program. The minimum requirements of this program consist of an initial demonstration of laboratory capability and the analysis of replicate and spiked samples as a continuing check on performance. The laboratory is required to maintain performance records to define the quality of data that is generated. Ongoing performance checks must be compared with established performance criteria to determine if the results of analyses are within precision and accuracy limits expected of the method.

2. Before performing any analyses, the analyst must demonstrate the ability to generate acceptable accuracy and precision by performing the following operations.

(a) Perform four replicate analyses of a 20 mg./l. sulfide standard prepared in distilled water (see paragraph 8 under "Reagents" above).

(b)(1) Calculate clean water precision and accuracy in accordance with standard statistical procedures. Clean water acceptance limits are presented in paragraph 2(b)(2) below. These criteria must be met or exceeded before sample analyses can be initiated. A clean water standard must be analyzed with each sample set and the established criteria met for the analyses to be considered under control.

(2) Clean water precision and accuracy acceptance limits: For distilled water samples containing from 5 mg./l. to 50 mg./l. sulfide, the mean concentration from four replicate analyses must be within the range of 72 to 114 percent of the true value.

3. The Method Detection Limit (MDL) should be determined periodically by each participating laboratory in accordance with the procedures specified in "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA–600/4–82–057, July 1982, EMSL, Cincinnati, OH 45268. For the convenience of the user, these procedures are contained in Appendix C to Part 425.

4. A minimum of one spiked and one duplicate sample must be run for each analytical event, or five percent spikes and five percent duplicates when the number of samples per event exceeds twenty. Spike levels are to be at the MDL (see paragraph 3 above for MDL samples) and at x when x is the concentration found if in excess of the MDL. Spike recovery must be 60 to 120 percent for the analysis of a particular matrix type to be considered valid.

5. Report all results in mg./liter. When duplicate and spiked samples are analyzed, report all data with the sample results.

19. Part 425 is amended by adding Appendix C to read as follows:

Appendix C to Part 425—Definition and Procedure for the Determination of the Method Detection Limit [1]

The method detection limit (MDL) is defined at the minimum concentration of a substance that can be identified, measured and reported with 99 percent confidence that the analyte concentration is greater than zero and determined from analysis of a sample in a given matrix containing analyte.

Scope and Application

This procedure is designed for applicability to a wide variety of sample types ranging

[1] Source: "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA–600/4–82–057, July 1982, EMSL, Cincinnati, OH 45268

from reagent (blank) water containing analyte to wastewater containing analyte. The MDL for an analytical procedure may vary as a function of sample type. The procedure requires a complete, specific and well defined analytical method. It is essential that all sample processing steps of the analytical method be included in the determination of the method detection limit.

The MDL obtained by this procedure is used to judge the significance of a single measurement of a future sample.

The MDL procedure was designed for applicability to a broad variety of physical and chemical methods. To accomplish this, the procedure was made device- or instrument-independent.

Procedure

1. Make an estimate of the detection limit using one of the following:

(a) The concentration value that corresponds to an instrument signal/noise ratio in the range of 2.5 to 5. If the criteria for qualitative identification of the analyte is based upon pattern recognition techniques, the least abundant signal necessary to achieve identification must be considered in making the estimate.

(b) The concentration value that corresponds to three times the standard deviation of replicate instrumental measurements for the analyte in reagent water.

(c) The concentration value that corresponds to the region of the standard curve where there is a significant change in sensitivity at low analyte concentrations, i.e., a break in the slope of the standard curve.

(d) The concentration value that corresponds to known instrumental limitations.

It is recognized that the experience of the analyst is important to this process. However, the analyst must include the above considerations in the estimate of the detection limit.

2. Prepare reagent (blank) water that is as free of analyte as possible. Reagent or interference free water is defined as a water sample in which analyte and interferent concentrations are not detected at the method detection limit of each analyte of interest. Interferences are defined as systematic errors in the measured analytical signal of an established procedure caused by the presence of interfering species (interferent). The interferent concentration is presupposed to be normally distributed in representative samples of a given matrix.

3. (a) If the MDL is to be determined in reagent water (blank), prepare a laboratory standard (analyte in reagent water) at a concentration which is at least equal to or in the same concentration range as the estimated MDL. (Recommended between 1 and 5 times the estimated MDL.) Proceed to Step 4.

(b) If the MDL is to be determined in another sample matrix, analyze the sample. If the measured level of the analyte is in the recommended range of one to five times the estimated MDL, proceed to Step 4.

If the measured concentration of analyte is less than the estimated MDL, add a known amount of analyte to bring the concentration of analyte to between one and five times the MDL. In the case where an interference is coanalyzed with the analyte:

If the measured level of analyte is greater than five times the estimated MDL, there are two options:

(1) Obtain another sample of lower level of analyte in same matrix if possible.

(2) The sample may be used as is for determining the MDL if the analyte level does not exceed 10 times the MDL of the analyte in reagent water. The variance of the analytical method changes as the analyte concentration increases from the MDL, hence the MDL determined under these circumstances may not truly reflect method variance at lower analyte concentrations.

4. (a) Take a minimum of seven aliquots of the sample to be used to calculate the MDL and process each through the entire anlaytical method. Make all computations according to the defined method with final results in the method reporting units. If blank measurements are required to calculate the measured level of analyte, obtain separate blank measurements for each sample aliquot anlayzed. The average blank measurement is subtracted from the respective sample measurements.

(b) It may be economically and technically desirable to evaluate the estimated MDL before proceeding with 4a. This will: (1) Prevent repeating this entire procedure when the costs of analyses are high and (2) insure that the procedure is being conducted at the correct concentration. It is quite possible that an incorrect MDL can be calculated from data obtained at many times the real MDL even though the background concentration of analyte is less than five times the calculated MDL. To insure that the estimate of the MDL is a good estimate, it is necessary to determine that a lower concentration of analyte will not result in a significantly lower MDL. Take two aliquots of the sample to be used to calculate the MDL and process each through the entire method, including blank measurements as described above in 4a. Evaluate these data:

(1) If these measurements indicate the sample is in the desirable range for determining the MDL, take five additional aliquots and proceed. Use all seven measurements to calculate the MDL.

(2) If these measurements indicate the sample is not in the correct range, reestimate the MDL, obtain new sample as in 3 and repeat either 4a or 4b.

5. Calculate the variance (S^2) and standard deviation (S) of the replicate measurements, as follows:

$$S^2 = \frac{1}{n-1}\left[\sum_{i=1}^{n} X_i^2 - \left(\sum_{i=1}^{n} X_i\right)^2 \Big/ n\right]$$

$$S = (S^2)^{0.5}$$

where: the x_i, i = 1 to n are the analytical results in the final method reporting units obtained from the n sample aliquots and

$$\sum_{i=1}^{n} X_i^2$$

refers to the sum of the X values from i = 1 to n.

6. (a) Compute the MDL as follows:

$MDL = t_{(n-1,\ 1-a\ =\ .99)}(S)$

where:

MDL = the method detection

$^t(n\text{-}1,\ 1\text{-}a = .99)$ = the students' t value appropriate for a 99 percent confidence level and a standard deviation estimate with n-1 degrees of freedom. See Table.

S = standard deviation of the replicate analyses.

(b) The 95 percent confidence limits for the MDL derived in 6a are computed according to the following equations derived from percentiles of the chi square over degrees of freedom distribution (X2/df) and calculated as follows:

$MDL_{LCL} = 0.69$ MDL

$MDL_{UCL} = 1.92$ MDL where MDL_{LCL} and MDL_{UCL} are the lower and upper 95 percent confidence limits respectively based on seven aliquots.

7. Optional iterative procedure to verify the reasonableness of the estimated MDL and calculated MDL of subsequent MDL determinations.

(a) If this is the initial attempt to compute MDL based on the estimated MDL in Step 1, take the MDL as calculated in Step 6, spike in the matrix at the calculated MDL and proceed through the procedure starting with Step 4.

(b) If the current MDL determination is an iteration of the MDL procedure for which the spiking level does not permit qualitative identification, report the MDL as that concentration between the current spike level and the previous spike level which allows qualitative identification.

(c) If the current MDL determination is an iteration of the MDL procedure and the spiking level allows qualitative identification, use S^2 from the current MDL calculation and S^2 from the previous MDL calculation to compute the F ratio.

$$\text{if} \quad \frac{S_A^2}{S_B^2} < 3.05$$

then compute the pooled standard deviation by the following equation:

$$S_{pooled} = \left[\frac{6S_A^2 + 6S_B^2}{12}\right]^{0.5}$$

$$\text{if } \frac{S_A^2}{S_B^2} > 3.05,$$

respike at the last calculated MDL and process the samples through the procedure starting with Step 4.

(d) Use the S_{pooled} as calculated in 7b to compute the final MDL according to the following equation:

$MDL = 2.681\ (S_{pooled})$

where 2.681 is equal to $t(12, 1-a=.99)$

(e) The 95 percent confidence limits for MDL derived in 7c are computed according to the following equations derived from percentiles of the chi squared over degrees of freedom distribution.

$MDL_{LCL} = 0.72$ MDL

$MDL_{UCL} = 1.65$ MDL

where LCL and UCL are the lower and upper 95 percent confidence limits respectively based on 14 aliquots.

Reporting

The analytical method used must be specifically identified by number or title and the MDL for each analyte expressed in the appropriate method reporting units. If the analytical method permits options which affect the method detection limit, these conditions must be specified with the MDL value. The sample matrix used to determine the MDL must also be identified with the MDL value. Report the mean analyte level with the MDL. If a laboratory standard or a sample that contained a known amount analyte was used for this determination, report the mean recovery, and indicate if the MDL determination was iterated.

If the level of the analyte in the sample matrix exceeds 10 times the MDL of the analyte in reagent water, do not report a value for the MDL.

Reference

Glaser, J.A., Foerst, D.L., McKee, G.D., Quave, S.A., and Budde, W.L., "Trace Analysis for Wastewaters," Environmental Science and Technology, 15, 1426 (1981).

TABLE OF STUDENTS' t VALUES AT THE 99 PERCENT CONFIDENCE LEVEL

Number of replicates	Degrees of freedom (n−1)	$t(n-1, 1-a=.99)$
7	6	3.143
8	7	2.998
9	8	2.896
10	9	2.821
11	10	2.764
16	15	2.602
21	20	2.528
26	25	2.485
31	30	2.457
61	60	2.390
		2.326

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Federal Register

Monday
March 21, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27, 29, and 133
Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 4; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27, 29, and 133

[Docket No. 25570; Notice No. 88-7]

Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 4

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice deals primarily with airframe and related equipment certification requirements for rotorcraft in both the transport and normal airworthiness categories. One proposal affects a change to an operating rule for external load operators. These proposals, which grew out of a rotorcraft regulatory review program, arise from the rapidly changing rotorcraft industry and the recognition by both government and industry that updated safety standards are needed. These proposals, if adopted, would provide a high level of safety in design requirements while removing certain unnecessary existing burdens and more fully utilizing the unique characteristics and capabilities of rotorcraft.

DATE: Comments must be received on or before September 19, 1988.

ADDRESSES: Comments on the proposals may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25570; 800 Independence Avenue, SW., Washington, DC 20591, or delivered in duplicate to: Room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: Docket No. 25570. Comments may be examined in Room 915-G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Major, Regulations Program Management, ASW-111, Aircraft Certification Division, FAA, Fort Worth, Texas 76193-0111, telephone number (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Rule Docket address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in the notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement in made: "Comments to Docket No. 25570." The postcard will be date/time stamped, and mailed to the commenter.

For convenience, each proposal in this notice is numbered separately. The FAA requests that interested persons, when submitting comments, refer to proposals by these numbers and by the section to which they relate.

Availability of This Notice

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attn: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The FAA gave notice of its Rotorcraft Regulatory Review Program (RRRP) and invited all interested persons to submit proposals for consideration during its forthcoming Rotorcraft Regulatory Review Conference in Notice 79-1 (44 FR 3250; January 15, 1979). In Notice 79-1A (44 FR 12685; March 8, 1979), the FAA extended the period for submission of proposals after receiving petitions for extension.

The FAA received 613 proposals in response to Notice 79-1, of which 569 were placed on the conference agenda. A separate printing of six other proposals inadvertently omitted from the compilation was distributed at the conference.

The FAA announced that the Rotorcraft Regulatory Review Conference would be held in New Orleans, Louisiana, December 10-14, 1979, and that the conference agenda and compilation of proposals were available in Notice 79-1B (44 FR 60747; October 22, 1979). At the conference, which was held as scheduled, each proposal was discussed in one of several committees. A transcript of those discussions has been placed in Docket No. 18689. The conference proposals that relate to this notice were primarily discussed in Committee I.

In response to comments suggesting an agenda schedule revision, the FAA changed the agenda schedule in Notice 79-1C (44 FR 67136; November 23, 1979). On March 24, 1980, the FAA received a letter from the Helicopter Association of America and the Aerospace Industries Association of America, Inc., requesting a meeting to present industry concerns to the Rotorcraft Regulatory Review Team. The FAA gave careful consideration to the request and determined it would be in the best interest to afford all interested persons the opportunity to listen and comment on industry concerns. Accordingly, Notice 79-1D (45 FR 43202; June 26, 1980) announced a Rotorcraft Regulatory Review meeting which was held August 18-20, 1980, in Washington, DC. A copy of the transcript of that meeting is contained in Docket No. 18689.

Parts 27 and 29 of the Federal Aviation Regulations (FAR) presently have many common standards because of design features and characteristics that are common to both normal and transport category rotorcraft. Several proposals that would affect such common standards identically were discussed concurrently during the Rotorcraft Regulatory Review Conference. The FAA and industry recognize the desirability of commonality for normal and transport rotorcraft airworthiness standards wherever justified. Many of the strength requirement standards and the design and construction standards are influenced very little by the size or complexity of rotorcraft, or they are objective performance standards that are not influenced by any design factors. Consequently, this notice contains many proposals to identically amend or add standards to both Parts 27 and 29. The FAA intends to maintain identical design or performance standards for normal and transport category rotorcraft wherever appropriate or justified.

Prior Regulatory Action

Some of the rules adopted in RRRP Amendment No. 1 (48 FR 4374; January 31, 1983) require transport helicopters with 10 or more passenger seats to comply with certain Category A design (multiengine) standards under Part 29 and allow transport helicopters with less than 10 passenger seats to comply with certain Category B design standards. The proposals contained in this notice were prepared with these added requirements in mind.

The Proposals

This notice deals primarily with proposals for certification rules of Parts 27 and 29 that are applicable to rotorcraft airframes and structures. An external cargo operating rule proposal for Part 133 is also contained in this notice. A number of unadopted conference proposals are listed in the appendix along with the reasons for which the FAA decided not to proceed with these proposals. This notice is part of the ongoing regulatory program of the FAA to upgrade, improve, and clarify certification standards for rotorcraft.

Economic Impact

Introduction

The initial regulatory evaluation represents the preliminary industry cost impact and benefit assessment for the regulatory changes contained in Notice No. 4 of the Rotorcraft Regulatory Review Program. The NPRM proposes to adopt new and amend existing airworthiness standards relating to Parts 27 and 29 rotorcraft certification and it includes an external cargo operating rule proposal for Part 133.

The NPRM and other rulemaking activity noted in the supplemental information are a result of a number of proposals submitted at the Rotorcraft Regulatory Review Conference held in New Orleans, Louisiana, in December 1979 and the Rotorcraft Regulatory Review Meeting of August 18–20, 1980, held in Washington, DC. The evaluation also includes proposals developed within the FAA after the completion of the previously mentioned conferences.

The estimates of economic impacts and benefit assessment for these proposals are based on the best information currently available to the FAA. The estimates of economic impact contain information provided to the FAA by consultant personnel and rotorcraft industry certification experts. This information indicates that all except one of these proposals would only impose very minor costs or no costs at all. The conclusions regarding economic consequences reflect the judgment of FAA. These estimates are subject to change after the public comment period if better information becomes available.

Summary

A large number of the proposed regulatory changes contained in this notice have been determined to have negligible or no technical and economic impact. Many of these proposed changes are either editorial or clarifying in nature. In addition, all but one proposal in corporates current industry or FAA certification practice and procedure. No estimates of specific costs or savings are made for these groups of proposals. The proposals having a negligible impact on certification costs are not discussed in this economic evaluation but are listed in the current regulatory evaluation which is filed in the docket for this notice.

The single proposed standard determined to have an economic impact is related to the added emergency evacuation demonstration requirements for certain Part 29 rotorcraft. The FAA estimates the one-time demonstration costs for an emergency evacuation demonstration to range from $125,000 to $300,000 for each new design. The exact costs would depend on the size of the rotorcraft in question and whether a mock-up of the airframe already exists. Historic accident data pertaining to transport category rotorcraft do not provide a precise basis for evaluating the effectiveness of emergency evacuation demonstrations in mitigating casualty losses in survivable accidents. However, data obtained from assessing the emergency evacuation capability of a rotorcraft resting on its side show that it is likely to increase the probability of safe occupant egress in an otherwise survivable accident. If, for example, this proposal can prevent one fatality (assuming for purposes of analysis a minimum value of a life of $1 million), and the cost of compliance is three times greater than the higher estimate for similar evacuations with small transport airplanes ($3 \times \$300,000 = \$900,000$), the benefits of the proposed rule would exceed its costs. Nevertheless, the FAA solicits data, views, etc., relating to the economic impact of this particular proposed standard. Specific comments regarding proposed § 29.803(d) are requested as follows:

1. In your opinion, have there been rotorcraft accidents in which the lack of emergency exits prevented survival?

2. Can the current method of evacuation tests and analyses predict the level of protection afforded rotorcraft passengers when the aircraft is resting on its side?

3. What are the costs of the additional tests and analyses required by the proposed rule?

4. Are there alternative methods of accomplishing the objectives of the proposal which would ensure rapid and safe evacuation of passengers in an emergency when the aircraft is resting on its side?

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the amendments to Parts 27, 29, and 133 proposed in this notice, at promulgation, will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review proposed rules which may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities. The FAA criteria for a small entity define a small helicopter manufacturer as an independently owned and managed firm having fewer than 75 employees. Under the FAA size standard criteria only three of the present eleven rotorcraft manufacturers subject to the certification changes to Parts 27 and 29 have fewer than 75 employees. Accordingly, the proposed amendments to Parts 27 and 29 contained in this notice will not impact more than one third (i.e., will not impact a substantial number) of small entities. Similarly, the proposed amendment to Part 133 will not have a significant impact on a substantial number of small entities. The anticipated marginal increase in certification costs for Parts 27 and 29 helicopter manufacturers is not perceived to raise any barrier to entry into this market for small manufacturers.

International Trade Statement

The FAA believes that the certification cost which may be imposed by the evacuation demonstration proposal for certain transport category rotorcraft will not result in a competitive trade disadvantage or advantage for American manufacturers in domestic or foreign markets. This assumption is based on the fact that foreign manufacturers must comply with the certification standards of Parts 27 and 29 as a condition to entry into U.S. markets. Considering the size of the U.S. market, foreign manufacturers are likely to comply with the certification standards of the United States which is

the largest segment of their export markets. Further, foreign and U.S. rotorcraft manufacturers are expected to pass any new certification costs on to consumers in their respective domestic and foreign markets.

The FAA has determined that this document involves proposed regulations which are not considered major under the procedures and criteria prescribed in Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the person identified in the section entitled "**FOR FURTHER INFORMATION CONTACT.**" For the reasons stated in the regulatory evaluation, I certify that these regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. In addition, these proposals, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 133

Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air transportation, Cargo, Airports, Airworthiness directives and standards.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 27, 29, and 133 of the Federal Aviation Regulations (FAR) (14 CFR Parts 27, 29, and 133) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

4–1. The authority citation for Part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4–2. By amending § 27.307 by revising paragraph (a) to read as follows:

§ 27.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition in the environments to which the structure will be exposed in operation. Structural analysis (static or fatigue) may be used only if the structure conforms to those for which experience has shown this method to be reliable. In other cases, substantiating load tests must be made.

* * * * *

Explanation: This proposal would require proof of compliance with the strength and deformation requirements of Subpart C (Part 27) to be shown in the environmental conditions to which the structure will be exposed in operation. The effects of the environment on the strength properties of materials should be considered when evaluating the proof of structure. Such effects could seriously deteriorate the level of safety of rotorcraft structure. The strength of some composite materials significantly deteriorates under certain environmental conditions. An identical requirement is proposed for § 29.307.

Advisory Circular (AC) 20–107A, Composite Aircraft Structure, contains policy and guidance for certification. The proposed rule change would provide a specific regulatory basis for determining environmental effects on the strength of composites, but the standard would apply to metallic structures as well as composites. In previous certification programs, the FAA has considered any significant strength deterioration of metallic structures that is due to exposure at elevated temperatures.

Ref: Proposals 43 and 199; Committee I.

4–3. By revising § 27.337 to read as follows:

§ 27.337 Limit maneuvering load factor.

The rotorcraft must be designed for—

(a) A limit maneuvering load factor ranging from a positive limit of 3.5 to a negative limit of −1.0; or

(b) Any positive limit maneuvering load factor not less than 2.0 and any negative limit maneuvering load factor of not less than −0.5 for which—

(1) The probability of being exceeded is shown by analysis and flight tests to be extremely remote; and

(2) The selected values are appropriate to each weight condition between the design maximum and design minimum weights.

Explanation: The proponent of the conference proposal suggested wording changes to clarify § 27.337 (a) and (b). The FAA agreed with the intent of the proposal but offered a counterproposal that was accepted.

The notice proposal would clarify the standard by revising paragraphs (a) and (b) and adding new paragraphs (b) (1) and (2). The substance of proposed paragraph (b)(1) is presently contained in the last part of paragraph (b) of § 27.337. Paragraph (b)(2) is the only change not discussed at the conference. New paragraph (b)(2) would relate the selection of limit load factors to the minimum and maximum design weights and would be identical to present § 29.337(b)(2). This change in the section would reflect present certification practice in the application of both §§ 27.337 and 29.337.

Proposed § 29.337 in this notice agrees with this proposal.

Ref: Proposals 45 and 201; Committee I.

4–4. By adding a new § 27.351 to read as follows:

§ 27.351 Yawing conditions.

(a) Each rotorcraft must be designed for the loads resulting from the maneuvers specified in paragraphs (b) and (c) of this section with—

(1) Unbalanced aerodynamic moments about the center of gravity reacted in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces; and

(2) Maximum main rotor speed.

(b) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from zero up to 0.6 V_{NE},—

(1) Displace the cockpit directional control suddenly to the maximum deflection limited by the control stops or by the pilot force specified in § 27.395(a);

(2) Attain a resulting sideslip angle or 90°, whichever is less; and

(3) Return the directional control suddenly to neutral.

(c) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from 0.6 V_{NE} up to V_{NE} or V_H, whichever is less,—

(1) Displace the cockpit directional control suddenly to the maximum deflection limited by the control stops or by the pilot force specified in § 27.395(a);

(2) Attain a resulting sideslip angle or 15°, whichever is less, at the lesser speed of V_{NE} or V_H;

(3) Vary the sideslip angles of paragraphs (b)(2) and (c)(2) of this section directly with speed; and

(4) Return the directional control suddenly to neutral.

Explanation: Yawing conditions are not presently contained in Part 27 of this chapter. The rotorcraft manufacturers advocate yawing standards. Several

rotorcraft designs have been voluntarily substantiated for yawing conditions. The proposed standard, if adopted, would assure that objective and limited yawing conditions are considered and uniformly applied for structural design of normal category rotorcraft. Yawing or sideslip flight conditions of present day small helicopters create significant aerodynamic forces on the stabilizing surfaces. When tail rotor thrust and vertical stabilizer surface forces are combined, significant loads are imposed on the fuselage. Yawing conditions for transport rotorcraft are presently contained in § 29.351 of Part 29. This notice also contains a proposal to revise § 29.351. Yawing condition standards that relate to design capability should be identical in Parts 27 and 29.

See the explanation for the proposed revision to § 29.351 for further information.

Ref. Proposals 46 and 47; Committee I.

4–5. By revising § 27.391 to read as follows:

§ 27.391 General.

Each auxiliary rotor, each fixed or movable stabilizing or control surface, and each system operating any flight control must meet the requirements of §§ 27.395, 27.397, 27.399, 27.401, 27.403, 27.411, 27.413, and 27.427.

Explanation: With adoption of proposed new § 27.427 concerning unsymmetrical loads on the horizontal stabilizer, the general rule for control surfaces would need to include this section. See the explanation for proposed new § 27.427. A previous oversight would be corrected by adding present § 27.399 to the general requirements list.

4–6. By amending § 27.395 by revising paragraph (b) to read as follows:

§ 27.395 Control system.

* * * * *

(b) Each primary control system, including its supporting structure, must be designed as follows:

(1) The system must withstand loads resulting from the limit pilot forces prescribed in § 27.397;

(2) Notwithstanding paragraph (b)(3) of this section, when power-operated actuator controls or power boost controls are used, the system must also withstand the loads resulting from the force output of each normally energized power device, including any single power boost or actuator system failure;

(3) If the system design or the normal operating loads are such that a part of the system cannot react to the limit pilot forces prescribed in § 27.397, that part of the system must be designed to withstand the maximum loads that can be obtained in normal operation. The minimum design loads must, in any case, provide a rugged system for service use, including consideration of fatigue, jamming, ground gusts, control inertia, and friction loads. In the absence of rational analysis, the design loads resulting from 0.60 of the specified limit pilot forces are acceptable minimum design loads; and

(4) If operational loads may be exceeded through jamming, ground gusts, control inertia, or friction, the system must withstand the limit pilot forces specified in § 27.397, without yielding.

Explanation: Conference proposals were considered concurrently to revise the standards to recognize powered control actuators or boost systems, to increase the minimum design load requirements for a control system jam, to allow lower minimum design loads, and to clarify the standards for normal and transport category rotorcraft. One conference participant suggested an update of § 27.395 to include design requirements for powered control systems (either boost to pilot effort or use of negligible pilot effort). Another participant suggested elimination of the current minimum design loads which are 60 percent of the specified limit pilot forces and another suggested raising the minimum design load to equal the limit pilot forces which would then account for a possible jam, ground gust, control inertia, or friction.

Conference discussions pertaining to the proposal that would eliminate the current minimum design loads noted that § 29.395(b) permits usage of a rational analysis in lieu of the specified minimum design loads, and the proposed revision to § 29.395(b) which allows use of lower loads derived from a rational analysis is, therefore, unnecessary.

Most existing helicopter designs having gross weights over 2,500 pounds use either power boost or full actuation control systems, and smaller helicopters principally rely on manual control. Normal category rotorcraft, those of less than 6,000 pounds gross weight, usually have single boost systems with manual reversion. Amending § 27.395(b) to provide revised design standards for control boost or actuation systems would not affect manually powered control systems.

The notice proposal would add paragraph (b)(2) for powered control systems, either boost or full actuation, which would reflect many current control system designs. This proposed new standard would agree with present § 27.695(a)(1) concerning power control systems and would not be a substantive change in the standards.

The notice proposal would add a new paragraph (b)(4) to add minimum design loads similar to proposed § 29.395(b)(4) in this notice. Increasing the minimum design loads from 60 to 100 percent of limit pilot forces to account for possible jamming, ground gusts, control inertia, or friction would probably affect manually powered control systems used in the smaller rotorcraft, but should not appreciably affect other control systems.

The proposed standard would reflect the general design practice of rotorcraft having primary control system stops located between the crewmember and the power actuators, but near the crewmember controls. Secondary stops may be located elsewhere but would be subject to the same design loads as primary stops. Present § 27.395(b) would also be changed from referring to "The part of each control system from the control stops to the attachment to the rotor blades (or control areas) * * *" to "Each primary control system, including its supporting structure, * * *." This proposed change in wording would not be substantive and would agree with proposed § 29.395(b) contained in this notice. To clarify the standard, present paragraph (b) would be separated into three subparagraphs with the changes included, and a new subparagraph (b)(4) would be added.

The proposed amendment to § 27.395(b) should result in a standard equal to the proposed § 29.395(b), with one exception. For normal category rotorcraft, the limit pilot forces would not be combined with the power device output force since experience has shown it is not necessary to combine maximum pilot forces of § 27.397 with the maximum output force of the power device.

Ref: Proposals 49 and 205; Committee I.

4–7. By adding a new § 27.427 following § 27.413 and before the heading, Ground Loads, to read as follows:

§ 27.427 Unsymmetrical loads.

(a) Horizontal tail surfaces and their supporting structure must be designed for unsymmetrical loads arising from yawing and rotor wake effects in combination with the prescribed flight conditions.

(b) To meet the design criteria of paragraph (a) of this section, in the absence of more rational data, both of the following must be met:

(1) One hundred percent of the maximum loading from the symmetrical flight conditions in § 27.413 acts on the

surface on one side of the plane of symmetry, and no loading acts on the other side.

(2) Fifty percent of the maximum loading from the symmetrical flight conditions is § 27.413 acts on the surface on each side of the plane of symmetry but in opposite directions.

(c) For empennage arrangements where the horizontal tail surfaces are supported by the vertical tail surfaces, the vertical tail surfaces and supporting structure must be designed for the combined vertical and horizontal surface loads resulting from each prescribed flight condition, considered separately. The flight conditions must be selected so the maximum design loads are obtained on each surface. In the absence of more rational data, the unsymmetrical horizontal tail surface loading distributions described in this section must be assumed.

Explanation: This notice proposal would add a new standard requiring application of unsymmetrical loads when evaluating horizontal stabilizing surfaces. The conference proposal was initially submitted as a revision to §§ 27.413 and 29.413. It is more appropriate and consistent with the regulatory philosophy to use the same paragraph numbers for the same standards found in different parts. The notice proposal would add a new paragraph, similar to § 25.427, containing the unsymmetrical loading requirements under control surface and system loads.

A participant at the conference stated that the present requirements of § 27.413(b) are adequate to account for the unsymmetrical loading design conditions. Section 27.413(b) states that load distributions must closely simulate the actual pressure distribution conditions. The participant also questioned the difference found in the conference proposed standard when compared to the unsymmetrical loading requirements specified in §§ 23.427 and 25.427 for airplanes. The participant requested an explanation from the FAA concerning a different and possibly more critical standard for helicopter stabilizing or control surfaces as compared to airplane surfaces. At the conference, it was noted that while impingement of the rotor wake on a stabilizing surface of a helicopter is somewhat different from an airplane surface air load, certain airplane flight conditions do cause wing vortices and jet engine exhausts to impinge on the stabilizing surface and create some unsymmetrical loading. The participant objected to the adoption of a more stringent rotorcraft standard such as 100 percent on one side and zero on the other, and requested that such a proposal be fully justified with technical data.

The FAA does not agree that the present requirements of §§ 27.413(b) and 29.413(b) are adequate to account for the unsymmetrical loading design condition. Sections 27.413(b) and 29.413(b) do not clearly and specifically address unsymmetrical loading conditions. Sections 27.427 and 29.427 are proposed to clearly and specifically inform the public as to the required standards for unsymmetrical loading design conditions. Such clarity and specificity will also aid the FAA in uniformly interpreting these requirements.

Any horizontal stabilizer unsymmetrical loading design condition must be interpreted and imposed with uniformity to produce an equal and appropriate level of safety throughout the industry. This notice proposal would achieve this objective by adding new §§ 27.427 and 29.427 that pertain to horizontal stabilizer unsymmetrical loading. Furthermore, the FAA does find justification for a difference in standards between airplanes and rotorcraft. Unsymmetrical loading on rotorcraft horizontal stabilizer surfaces has been found during previous type certification programs. In addition, § 25.427 for airplanes specifically notes that the loading conditions described in § 25.427(b)(1) are applicable only to airplanes that are conventional in regard to location of propellers, wings, tail surfaces, and fuselage shape. Rotorcraft are not considered conventional aircraft in the context of § 25.427(b)(1) and different standards should be prescribed than the design loading conditions which are prescribed for conventional airplanes.

Generally, horizontal stabilizing surfaces on typical rotorcraft are subjected to complex airflow distributions which are directly affected by flight conditions and by possible tail rotor wake impingement. The resulting load distributions are not comparable to those of airplanes.

The proposal allows use of rationally determined unsymmetrical design loads for the stabilizer. In the absence of design loads derived from a rational analysis, two different empirical load distributions are specified. One condition would impose 100 percent of the surface load from § 27.413 or § 29.413 on the stabilizer half and no load on the opposite half stabilizer. The other empirical condition would impose 50 percent of the surface load from § 27.413 or § 29.413 on the right or left half ⅛of the stabilizer and 50 percent of the design load acting opposite in direction on the opposite half of the stabilizer. If the stabilizer protrudes from only one side of the fuselage or tail boom, the standard would not apply.

Ref: Proposals 51 and 208; Committee I.

4–8. By amending § 27.501 by revising paragraphs (d)(3) and (f)(2)(ii) to read as follows:

§ 27.501 Ground loading conditions: Landing gear with skids.

* * * * *

(d) * * *

(3) The total sideload must be applied equally between the skids and along the length of the skids.

* * * * *

(f) * * *

(2) * * *

(ii) Distributed equally over 33.3 percent of the length between the skid tube attachments and centrally located midway between the skid tube attachments.

Explanation: The notice proposal concerns two aspects of skid landing gear design loads. A conference proposal (54a; Committee I) was submitted to reduce the severity of sideload design conditions by dividing the specified sideload equally between each of two skid tubes, instead of applying the specified sideload to one skid tube as specified in present § 27.501(d)(3). The sideload, both inward and outward acting, of each skid tube would be reduced by 50 percent. The proponent of proposal 54a contended the present rule is unduly severe and drastically exceeds standards for other types of aircraft landing gear. The proponent also stated the outward acting sideload condition is especially unrealistic. The proponent stated Civil Air Regulations (CAR) Part 6 helicopters designed to standards similar to those proposed at the conference prove, through extensive experience, that the proposal would provide a high degree of safety.

The agency reviewed the certification standards for Bell Model 47 helicopters on Type Certificate Nos. H–1 and 2H1 which were certificated under CAR Part 6. The numerous models with curved and straight cross tubes were certified to special standards (contained in the docket of this notice) containing much less severe sideload criteria than those in the present standard. Exemption No. 2950 was issued in 1980 to reduce the side load by 50 percent for certain Bell Model 47G helicopters certified to CAR Part 6, § 6.247(c)(3). The service history of the landing gear on these helicopters is satisfactory and demonstrates an adequate level of safety. For comparison, the certification standards

for wheel landing gear sideload conditions, such as §§ 27.485, 29.485, 23.485, and 25.485, require less severe combined side and vertical loads than those contained in §§ 27.501(d)(3) and 29.501(d)(3). The wheel standards require, in summary, 0.3 of the total vertical load, acting outward, and 0.4 of the total vertical load, acting inward, in combination with the only one-half of the vertical load.

Section 27.501(d)(1) presently requires application of 100 percent, not one-half, of the vertical load in combination with the specified sideload, 0.5 of the vertical load. It is also noted that a notice proposal to change §§ 27.571 and 29.571 would require measurement of the operating stress levels of the rotorcraft landing gear as a part of the fatigue substantiation program. These operating stresses or loads data should supplement the strength substantiation of new rotorcraft designs. In light of the foregoing, an amendment to §§ 27.501(d)(3) and 29.501(d)(3) is proposed that would reduce the inward and outward acting sideload standard by 50 percent. The vertical load standard for skid landing gear would not be changed.

The second aspect of proposed changes to the skid landing gear standards concerns the "midpoint" obstruction load. Two proposals (55 and 209; Committee I) were considered to eliminate the concentrated load "midpoint" obstruction requirement for longitudinal skid tubes of skid landing gear for transport and normal category rotorcraft. A proponent contended that military helicopter designs are not subject to this particular standard or to any similar standard. The service experience with these designs indicates that elimination of the "midpoint" obstruction requirement for skid gear on civil helicopter designs would be of no significance. Supplemental information and data on the military UH–1 series helicopter service experience with skid landing gear were subsequently sent to conference docket No. 18689 for FAA consideration. This information indicates that all types of problems involving skid landing gear occurred in service.

While the proponent had contended that only a small number of these reports involved the skid tubes, this was not adequately supported in the service data submitted. Justification for eliminating the "midpoint obstruction" concentrated load requirement is not conclusive due to insufficient details about the condition of skid tubes in civil and military service records. However, in view of many years of service history with the absence of service records specifically on skid tubes, an evenly distributed load of the same magnitude but applied over 33.3 percent of the skid tube length between the cross tube attachments, and located midway between the skid attachments, is an appropriate design condition for typical unprepared landing sites in which the empirical load may be attained. This revised empirical design condition should represent most unprepared landing surfaces. The load magnitude for this condition will remain at one-half of the skid tube vertical load derived from present §§ 27.501(b) and 29.501(b). Present §§ 27.501(a)(4)(ii) and 29.501(a)(4)(ii) require rational distribution of the specified landing loads along the bottom of both skids without reduction of load. In accordance with the foregoing, the notice proposal would additionally amend §§ 27.501(f)(2)(ii) and 29.501(f)(2)(ii) by removing the concentrated midpoint load and adding an equal empirical but evenly distributed load that would be applied to part of the midspan of the longitudinal skid tubes of normal and transport category rotorcraft.

Ref: Proposals 54a, 55, and 209; Committee I.

4–9. By revising § 27.563 to read as follows:

§ 27.563 Structural ditching provisions.

If certification with ditching provisions is requested, structural strength for ditching must meet the requirements of this section and § 27.801(e).

(a) *Forward speed landing conditions.* The rotorcraft must initially contact the most critical wave for reasonably probable water conditions at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes. The rotorcraft limit vertical descent velocity may not be less than 5 feet per second relative to the mean water surface. A rotor lift may be used to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out touchdown.

(b) *Auxiliary or emergency float conditions*—(1) *Floats fixed or deployed before initial water contact.* In addition to the landing loads in paragraph (a) of this section, each auxiliary or emergency float, or its support and attaching structure in the airframe or fuselage, must be designed for the load developed by a fully immersed float unless it can be shown that full immersion is unlikely. If full immersion is unlikely, the highest likely float buoyancy load must be applied. The highest likely buoyancy load must include consideration of a partially immersed float creating restoring moments to compensate the upsetting moments caused by side wind, unsymmetrical rotorcraft loading, water wave action, rotorcraft inertia, and probable structural damage and leakage considered under § 27.801(d). Maximum roll and pitch angles determined from compliance with § 27.801(d) may be used, if significant, to determine the extent of immersion of each float. If the floats are deployed in flight, appropriate air loads derived from the flight limitations with the floats deployed shall be used in substantiation of the floats and their attachment to the rotorcraft. For this purpose, the design airspeed for limit load is 1.11 of the float deployed airspeed operating limit.

(2) *Floats deployed after initial water contact.* Each float must be designed for full or partial immersion prescribed in paragraph (b)(1) of this section. In addition, each float must be designed for combined vertical and drag loads using a relative limit speed of 20 knots between the rotorcraft and the water. The vertical load may not be less than the highest likely buoyancy load determined under paragraph (b)(1) of this section.

Explanation: Conference proposals were made to specify standards for structural strength of normal and transport category rotorcraft ditching configurations. Rotorcraft have been approved for "ditching" under objective standards such as §§ 27.563, 29.563, 27.801(e) and 29.801(e). The configurations generally relied upon auxiliary or emergency inflatable float bags that have several compartments and a combined buoyancy in excess (at least 1.25) of the rotorcraft gross weight. The emergency inflatable bags may inflate in flight or may inflate promptly after water contact to prevent capsizing of the rotorcraft. Design standards are necessary to account for both types of emergency float systems. Industry representatives at the conference agreed that standards would be desirable. Conference proposals would have included the standards in §§ 27.801 and 29.801. However, §§ 27.563 and 29.563 are the proper sections for structural load or strength standards.

Adding these new objective or performance standards would provide a consistent basis for design and evaluation of ditching configurations. Reference to the objective standards in §§ 27.801(e) and 29.801(e), as

appropriate, would be retained. These two standards are not changed by this notice.

The notice proposal was derived from hull type and auxiliary float standards (§ 29.519) in conjunction with a vertical descent limit speed of 5 feet per second derived in part from § 29.561. The speeds in the proposal are limit speeds relative to the water. Although Part 27 does not contain appropriate design standards that are similar to § 29.519, § 29.519 would be used as a basis for Part 27 standards. Conference participants did not object to this philosophy. The rotorcraft structure would be subject to the design conditions specified in proposed paragraph (a) whether the emergency floats are inflated before or after water entry. Sections 27.801(d) and 29.801(d) presently contain additional structural design standards.

Section 29.563 would be revised to agree with proposed § 27.563 since "ditching" conditions are the same for both normal and transport category rotorcraft.

Ref: Proposals 86 and 258; Committee I.

4–10. By amending § 27.571 by revising the introductory text of paragraph (a) and paragraph (a)(4) to read as follows:

§ 27.571 Fatigue evaluation of flight structure.

(a) *General.* Each portion of the flight structure (the flight structure includes rotors, rotor drive systems between the engines and the rotor hubs, controls, fuselage, landing gear, and thir related primary attachments), the failure of which could be catastrophic, must be identified and must be evaluated under paragraph (b), (c), (d), or (e) of this section. The following apply to each fatigue evaluation:

* * * * *

(4) The loading spectra must be as severe as those expected in operation, including but not limited to, external cargo operations, if applicable, and ground-air-ground cycles. The loading spectra must be based on loads or stresses determined under paragraph (a)(3) of this section.

* * * * *

Explanation: Conference proposals were considered to include fatigue evaluation of the landing gear, assessment of the effect of the ground-air-ground cycle, and assessment of the effects of sling load operations, where applicable. Service experience, such as described in the preambles to Airworthiness Directives 76–14–03, 78–14–07, and 78–12–05, and service experience referenced in the conference proposal indicate that the landing gear is susceptible to "in-service" fatigue failures. The proposed evaluation of the landing gear should preclude fatigue failure of the landing gear.

Ground-air-ground cycle evaluation of the flight structure, excluding the landing gear, has been accomplished in several previous certification programs under the present rules. A realistic number of cycles per flight hour, such as four to six, has been used in the past.

The effects of sling load operations were also evaluated in past certification programs under the policy contained in Review Case Nos. 37 and 55 of FAA Order 8110.6, prior to Amendments 27–11 and 29–12 (41 FR 55454; December 20, 1976), as a variation of or as a separate type of operating spectrum. A copy of each review case is contained in the docket of this notice. If the normal or standard certified gross weight, c.g. ranges, and other limitations were not exceeded for the external cargo configuration, fatigue evaluation was not required by the operating rules in Part 133. The various rotorcraft manufacturers generally substantiated their aircraft for external cargo operations (typically sling loads), whether or not the standard gross weight was exceeded. But, experience has shown that fatigue evaluation for external cargo operations should now be a requirement, not an option. Rotorcraft which have frequent landings and takeoffs have experienced landing gear and drive system failures attributable to fatigue. Drive system failures in some helicopter models were related to sling load operations that may have caused excessive drive shaft misalignment.

In light of the foregoing, the notice proposal would require fatigue evaluation of the landing gear, assessment of the effects of the ground-air-ground cycle on the entire rotorcraft (not just the landing gear), and assessment of the effects of applicable external cargo operations on the rotorcraft.

Assessment of sling load operations and limitations for a Class B rotorcraft-load combination would also suffice for fatigue evaluation of the rotorcraft leading to approvals for external cargo carriers, such as boxes or racks, and for wire-stringing equipment within the same operating limitations. It is noted that Part 133 concerns external cargo operations using either standard or restricted category aircraft. If an "external cargo configuration" is not presented for certification, fatigue assessment for this operation would not be required. In this case, the agency may add a statement to the type certificate data sheet noting that an external cargo configuration was not evaluated.

A substantively identical change is proposed for § 29.571 concerning transport category rotorcraft.

Ref: Proposals 59, 60, 216, and 217; Committee I.

4–11. By amending § 27.613 by revising paragraph (b) and the introductory text of (d) and by adding a new paragraph (e) to read as follows:

§ 27.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraphs (d) and (e) of this section, compliance with this paragraph must be shown by selecting design values which assure material strength with the following probability—

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence; and

(2) For redundant structure, those in which the failure of individual elements would result in applied loads being safely distributed to other load-carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(d) Design values must be those contained in the following publications (available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120) or other values approved by the Administrator:

* * * * *

(e) Other design values may be used if a selection of the material is made in which a specimen of each individual item is tested before use and it is determined that the actual strength properties of that particular item will equal or exceed those used in design.

Explanation: Two conference proposals (65 and 224) would have added new §§ 27.615 and 29.615, entitled "Design properties," that would be substantively identical to current § 25.615. Section 25.615 refers to design properties contained in MIL–HDBK–5, Metallic Materials and Elements for Flight Vehicle Structure, and provides conditions for use of these properties. In Notice 84–21 (49 FR 47358; December 3, 1984), the agency proposes to remove § 25.615 from Part 25 and amend § 25.613 in a manner similar to this proposal for § 27.613. The conference proposals have merit since material design and property standards should be equally applied to

all aircraft. Therefore, §§ 27.613 and 29.613 should be amended to include design property standards for rotorcraft materials that are equal to airplane standards. The proposal contained herein would revise paragraph (b) by adding specific probability values for material strengths in both redundant and nonredundant structures in new paragraphs (b)(1) and (b)(2). Thereby §§ 27.613(b) and 29.613(b) would be identical to proposed § 25.613(b) in Notice 84–21.

New paragraphs (b)(1) and (b)(2) would relate to the data bases design allowables called A bases and B bases, respectively, specified in MIL–HDBK–5 series handbooks. A new paragraph (e) would be added which is similar to the proposal for § 25.613(e) in Notice 84–21. This would allow the use of materials whose strength or other pertinent property is determined by proper quality control inspections or tests. That is, materials better than standard materials could be used on a selective basis when proven by the applicant. In addition, this proposal would make an editorial change in paragraph (d) of §§ 27.613 and 29.613 for the correct address to secure copies of the documents specified in these sections.

Ref: Proposals 64, 65, 223, and 224; Committee I.

§ 27.629 [Amended]

4–12. By amending § 27.629 by removing the word "part" and inserting in place thereof the words "aerodynamic surface."

Explanation: Flutter is an aeroelastic phenomenon associated with aerodynamic surfaces, such as stabilizers, fins, control surfaces, wings, and rotor blades. This proposal would correct the standard to prevent any misunderstanding. A substantively identical revision is proposed for § 29.629.

Ref: Proposal 226; Committee I.

4–13. By amending § 27.663 by revising paragraph (a) to read as follows:

§ 27.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing through analysis or tests that malfunction or failure of a single means will not cause ground resonance.

* * * * *

Explanation: Conference proposals would change paragraph (b) to clarify the requiement for investigation of probable failure of the ground reasonance prevention means (damping means) and to clearly allow proof, through analysis, that probable failures would not be hazardous. Paragraph (b) of present §§ 27.663 and 29.663 concerns probable service variations and is not concerned with probable failure of the damping means. Paragraph (a) of the present standards concerns reliability or malfunction of the damping means. In line with these comments, the notice proposal would amend paragraph (a) to include failure assessment and to allow use of analysis or tests to prove that a malfunction or failure of a single means will not cause ground resonance of the rotorcraft.

The notice proposal for § 29.663 would revise paragraph (a) to agree with proposed § 27.663(a). In addition, the notice proposal would also revise § 29.663(b) to add the content of present § 27.663(b). See the explanation for the notice proposal for § 29.663. These two standards should be equal since they are objective airworthiness standards that are not dependent on rotorcraft size.

Ref: Proposal 230; Committee I.

4–14. By adding a new § 27.674 to read as follows:

§ 27.674 Interconnected controls.

Each flight control system must provide for safe flight and operate independently after a malfunction, failure, or jam of any interconnected control, such as engine and collective or collective and directional.

Explanation: Service history for a turbine-engine-powered rotorcraft revealed jamming of the engine N_2 control cable resulted in a jammed collective control. The engine N_2 control was connected to the collective control as is the general case. The pilot in the incident was reportedly unable to enter into an autorotation or to control the engine power. Present §§ 27.1309(b) and 29.1309(b) have been used in the past to evaluate some control systems. A conference proposal was made to revise §§ 27.691 and 29.691, "Autorotation control mechanism," to clarify the intent of the standard and require evaluation of failures of interrelated controls that might result in jamming the collective or autorotation control.

A conference counterproposal would add an additional paragraph to §§ 27.691 and 29.691 requiring consideration of malfunction, failure, or jamming effects for those controls which attach to or derive their actuation from main rotor blade pitch or autorotation control mechanisms.

Engine controls and directional controls have been or may be interconnected to the collective or autorotation control mechanism. A malfunction, failure, or jam in these controls should not affect safe operation of the collective control. These requirements are similar to the standards and philosophy of two-control airplanes contained in §§ 23.673(b) and 25.673. Sections 27.691 and 29.691 presently apply to collective control systems that may have detents or intermediate stops that must be bypassed to enter autorotation in the event of power failure. Autogyros generally have control position detents.

In light of the foregoing, to accomplish the intent of the conference-proposed changes to §§ 27.691 and 29.691, the notice would add new §§ 27.674 and 29.674, "Interconnected controls." These proposed standards would require safe operation of the flight control systems after malfunction, failure, or jamming of an interconnected flight control or engine control for normal and transport rotorcraft. The standards would also include the cyclic and collective controls, if interconnected.

Present §§ 27.691 and 29.691 concerning autorotation control design features of rotorcraft, including autogyros, would not be revised. The proposed standards are intended to assure that the cyclic, collective, or directional system of any rotorcraft will safely operate independently of a jam or failure in another system.

Ref: Proposal 68; Committee I.

4–15. By amending § 27.685 by adding new paragraphs (d), (e), and (f) to read as follows:

§ 27.685 Control system details.

* * * * *

(d) Cable systems be designed as follows:

(1) Cables, cable fittings, turnbuckles, splices, and pulleys must be of an acceptable kind.

(2) The design of cable systems must prevent any hazardous change in cable tension throughout the range of travel under any operating conditions and temperature variations.

(3) No cable smaller than three thirty-seconds of an inch diameter may be used in any primary control system.

(4) Pulley kinds and sizes must correspond to the cables with which they are used. The pulley cable combinations and strenght values specified or referenced in MIL–HDBK–5 (available from the Naval Publication and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120) must be used where applicable.

(5) Pulleys must have close fitting guards to prevent the cables from being displaced or fouled.

(6) Pulleys must lie close enough to the plane passing through the cable to

prevent the cable from rubbing against the pulley flange.

(7) No fairlead may cause a change in cable direction of more than 3°.

(8) No clevis pin subject to load or motion and retained only by cotter pins may be used in the control system.

(9) Turnbuckles attached to parts having angular motion must be installed to prevent binding throughout the range of travel.

(10) There must be means for visual inspection at each fairlead, pulley, terminal, and turnbuckle.

(e) Control system joints subject to angular motion must incorporate the following special factors with respect to the ultimate bearing strength of the softest material used as a bearing:

(1) 3.33 for push-pull systems other than ball and roller bearing systems.

(2) 2.0 for cable systems.

(f) For control system joints, the manufacturer's static, non-Brinell rating of ball and roller bearings may not be exceeded.

Explanation: While reviewing a proposal to change transport rotorcraft control system standards, it was found that specific cable control system design standards and control system bearing standards were not contained in Part 27. The proposal contained herein was not publicly discussed at the conference; however, it is presented for rulemaking. The notice proposal would add design practice standards for cable control systems that would be similar to those for transport rotorcraft control systems found in § 29.685(d), except the cable minimum size would be three thirty-seconds of an inch diameter for normal category rotorcraft. The Part 27 standards would require use of acceptable cables, fittings, turnbuckles, splices, and pulleys, and specify a source for minimum strength values. Installation practices or features would be specified.

Typical normal category rotorcraft may use cable systems for tail rotor control and controllable surfaces. A minimum size of three thirty-seconds of an inch diameter should be satisfactory for use on the lightly loaded controls of the smaller, typical normal category rotorcraft. Larger cable sizes will be required when necessary for adequate margins of strength.

In addition, the proposal would add new paragraphs (e) and (f), identical to § 29.685 (e) and (f), for specific control system bearing standards rather than simply relying on the subjective standards in § 27.623, "Bearing factors." These proposed standards would add margins of safety for bearings and joints and would facilitate the design of control systems. Control system bearings, whether used in normal or transport category rotorcraft, may be identical. Bearings are made to the same industry standards. This proposed standard would reflect current practice in rotorcraft designs.

4–16. By amending § 27.727 by revising paragraph (c) to read as follows:

§ 27.727 Reserve energy absorption drop test.

* * * * *

(c) The landing gear must withstand this test without collapsing. Collapse of the landing gear occurs when a member of the nose, tail, or main gear will not support the rotorcraft in the proper attitude or allows the rotorcraft structure, other than the landing gear and external accessories, to impact the landing surface.

Explanation: As requested at the conference, the notice proposal would define the collapse of a landing gear. A participant of the conference wanted the FAA to specifically define "collapse" of skid landing gear which use elastic spring members that yield under limit loads. Section 27.501(a)(2) allows yielding of elastic spring members under limit loads. Thus, § 27.501(a)(2) reflects and accepts the elastic/plastic and energy absorbing characteristics of aluminum skid landing gear. Steel spring gear and other types of typical aircraft landing gear are generally designed to avoid yielding under limit loads.

Under the reserve energy drop test, significant yielding or plastic deformation of typical aluminum skid landing gear will occur. The present standard requires landing gear to sustain a reserve energy drop test without collapse. The notice would add a definition for the collapse of any type landing gear, including skid landing gear elastic spring members. Each landing gear unit may be tested separately as stated in § 27.725(c). External accessories noted in this proposal are items such as lights, search lights, external speakers, and mirrors whose presence would not significantly alter the energy absorbing ability or features of the landing gear during this test. These accessories should be installed with frangible fittings and devices. Fuel tanks are not considered accessories in this case.

Another participant also proposed a similar change for § 27.501(a)(2) to define the collapse of a landing gear. However, revising the strength and load standards of § 27.501 may be confusing and would not be beneficial. Section 27.501 addresses skid landing gear strength and loads and allows exceptions for the characteristics of elastic spring members. Generally, compliance with the strength aspects of § 27.501 is accomplished by analytical means.

Static or dynamic tests of skid landing gear that use yielding elastic members would be difficult and would require several sets of landing gear to test or prove all of the critical load conditions specified in § 27.501. With yielding at limit load, ultimate load would be difficult to attain or sustain in a static test. The reserve energy absorption drop test standard, § 27.727 should, therefore, contain the criteria for collapse of all landing gear designs. A similar amendment is proposed for § 29.727.

Ref: Proposal 72; Committee I.

4–17. By amending § 27.783 by revising paragraph (b) to read as follows:

§ 27.783 Doors.

* * * * *

(b) Each external door must be located where persons using it will not be endangered by the rotors, propellers, engine intakes, and exhausts when appropriate operating procedures are used. If opening procedures are required, they must be marked inside on or adjacent to the door opening device.

Explanation: This proposal would revise paragraph (b) by removing the word "disc" following "rotor" to avoid further possible confusion between rotorcraft rotors and turbine engine rotor discs.

For passenger protection, paragraph (b) would be further revised to equal proposed § 29.783(b). This aspect of the proposal would additionally require consideration of engine intakes and exhausts and of propellers, if applicable, when preparing operating instructions and procedures for use of each external door. The present standard concerns passenger doors. The proposal would apply to each door, whether it is a passenger, cargo, or service door. The door operating procedures would be those presented in the flight manual procedures section. Procedures for opening of doors from the inside, if necessary for a particular design, would be located on a placard, stencil, or label on or adjacent to the particular door, as prescribed. See the explanation for proposed § 29.783 for further information.

Ref: Proposals 77 and 245; Committee I.

4–18. By amending § 27.807 by revising paragraph (d) to read as follows:

§ 27.807 Emergency exists.

* * * * *

(d) *Ditching emergency exists for passengers.* If certification with ditching provisions is requested, one emergency

exist on each side of the fuselage must be proven by test, demonstration, or analysis to—

(1) Be above the waterline;

(2) Have at least the dimensions specified in paragraph (b) of this section; and

(3) Open without interference from flotation devices whether stowed or deployed.

Explanation: A conference proposal was considered to revise §§ 27.801(b) and 29.801(b) by requiring a demonstration, test, or analysis to show that passenger exits will open and be usable after emergency float bags or flotation devices are deployed with the aircraft in the water. The FAA agrees, and introductory paragraph (d) would be revised and new paragraph (d)(3) would be added to ensure that these exits are usable. See explanation for § 29.807(d)(3) for information on transport rotorcraft passenger exits.

Ref: Proposal 84; Committee I.

4–19. By revising § 27.861 to read as follows:

§ 27.861 Fire protection of structure, controls, and other parts.

Each part of the structure, controls, rotor mechanism, and other parts essential to a controlled landing that would be affected by powerplant fires must be fireproof or protected so they can perform their essential functions for at least 5 minutes under any foreseeable powerplant fire condition.

Explanation: The present standard concerns use of parts that were not fireproof but would be affected by a powerplant fire. Use of fireproof material for "essential parts" is an equivalent means of compliance with the standard and has been accepted in past certification programs. A conference proposal was made to allow, as a specific alternative, use of fireproof parts on normal category rotorcraft without further proof. The proposal contained herein would provide this alternative.

A similar proposal is made to § 29.861 for Category B rotorcraft.

Ref: Proposals 88 and 270; Committee I.

4–20. By amending § 27.865 by revising introductory text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 27.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external load attaching means can withstand a limit static load equal to 2.5, or some lower factor approved under §§ 27.337 through 27.341, of the maximum external load for which authorization is requested. The load is applied in the vertical direction and in any direction making an angle of 30° with the vertical, except for those directions having a forward component. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(d) The fatigue evaluation of § 27.571(a) does not apply to this section except for a failure of the cargo attaching means that results in a hazard to the rotorcraft.

Explanation: A conference proposal was submitted to redefine the present 2.5 limit load factor as an ultimate load factor. In the original issue of Part 133 of this chapter, the 2.5 load factor was, in effect, defined as a proof load factor. A proof load factor is considered to be equal to a limit load factor in this case. This limit load factor will be retained except as allowed in this notice proposal.

A counterproposal was offered at the conference to allow use of a lower limit load factor that would be derived from an aircraft maneuvering and gust capability as substantiated in §§ 27.337 through 27.341 or §§ 29.337 through 29.341. The notice proposal presented here would accept this conference proposal to use a 2.5g load factor or a lower factor that an aircraft, due to its design characteristics, is not likely to exceed.

A conference proposal was also made to exclude the cargo attaching means from the fatigue evaluation of § 27.571 or § 29.571, provided a failure of the attaching means would not be catastrophic. This proposal has merit and would be contained in new paragraph (d) of this section. Loss of the total external cargo load due to a possible failure in the aircraft cargo attaching means is not considered a hazard to the rotorcraft since "emergency" release of the cargo is a typical feature and requirement.

An identical proposal is made for transport rotorcraft, § 29.865, "External cargo attaching means." Other proposals submitted to revise §§ 27.865 and 29.865 were deferred. An explanation for the disposition of each deferred proposal is contained in the appendix of this notice.

During conference discussions concerning the standard, it was stated that carriage of persons externally on a "hoist" is an operating rule consideration. Rules for carriage of persons on a routine basis as a Class D rotorcraft-load combination may be found in Amendments 1–33 and 133–9 (51 FR 40692; November 7, 1986). Section 133.45, as amended by Amendment 133–9, contains operating limitations and design standards for a Class D rotorcraft-load combination.

Ref: Proposals 89, 90, 91, 272, 273, and 274; Committee I.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

4–21. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4–22. By amending § 29.307 by revising paragraph (a) to read as follows:

§ 29.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition in the environment to which the structure will be exposed in operation. Structural analysis (static or fatigue) may be used only if the structure conforms to those for which experience has shown this method to be reliable. In other cases, substantiating load tests must be made.

* * * * *

Explanation: See explanation for proposed § 27.307.

Ref: Proposal 199; Committee I.

4–23. By amending § 29.337 by revising paragraph (a) and introductory text of paragraph (b) to read as follows:

§ 29.337 Limit maneuvering load factor.

* * * * *

(a) A limit maneuvering load factor ranging from a positive limit of 3.5 to a negative limit of −1.0; or

(b) Any positive limit maneuvering load factor not less than 2.0 and any negative limit maneuvering load factor of not less than −0.5 for which—

* * * * *

Explanation: See explanation for proposed § 27.337.

Ref: Proposal 201; Committee I.

4–24. By revising § 29.351 to read as follows:

§ 29.351 Yawing conditions.

(a) Each rotorcraft must be designed for the loads resulting from the manuevers specified in paragraphs (b) and (c) of this section, with—

(1) Unbalanced aerodynamic moments about the center of gravity reacted in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces; and

(2) Maximum main rotor speed.

(b) To produce the load required in paragraph (a) of this section, in

unaccelerated flight with zero yaw, at forward speeds from zero up to 0.6 V_{NE}—

(1) Displace the cockpit control suddenly to the maximum deflection limited by the control stops or by the maximum pilot force specified in § 29.395(a);

(2) Attain a resulting sideslip angle or 90°, whichever is less; and

(3) Return the directional control suddenly to neutral.

(c) To produce the load required in paragraph (a) of the section, in unaccelerated flight with zero yaw, at forward speeds from 0.6 V_{NE} up to V_{NE} or V_H, whichever is less,—

(1) Displace the cockpit directional control suddenly to the miximum deflection limited by the control stops or by the pilot force specified in § 29.395(a);

(2) Attain a resulting sideslip angle or 15°, whichever is less, at the lesser speed of V_{NE} or V_H;

(3) Vary the sideslip angles of paragraphs (b)(2) and (c)(2) of this section directly with speed; and

(4) Return the directional control suddenly to neutral.

Explanation: This proposals contains alternative but specific requirements for yaw design criteria which would be more representative of rotorcraft operation. Both low and high speed conditions are addressed, and specific sideslip design limits are provided. The present standard requires a rational analysis to determine maximum sideslip angles.

A conference participant noted that clarification of the meaning of § 29.351 is necessary inasmuch as it is not possible to maintain maximum directional control displacement at low airspeed and achieve a stabilized sideslip angle.

A participant also suggested that the proposal for § 29.351 should be identically incorporated in § 27.351 for normal category rotorcarft. Another participant opposed the incorporation of the § 29.351 proposal into § 27.351 and made an alternate proposal for § 27.351.

The FAA questions the rational for the differences in the proposals for §§ 27.351 and 29.351. The latter participant noted that a proposal for § 29.351 recognized the need for an additional investigation of the low speed yawing maneuver for structural design reasons. The FAA finds that the two conference proposals submitted for § 27.351 include forward speeds up to V_{NE} or V_H, whichever is less, which would therefore include the investigation of low speed yawing conditions. The FAA suggested at the conference that any additional rationale should be submitted to support the proposition that §§ 27.351 and 29.351 requirements should be different, but none were received. Further, no rationale could be found to support differences in the standards. It is noted that both conference proposals would limit the maximum design yaw or sideslip angle to 15° at the high speed limit which was included in this proposal.

The FAA has an obligation to be consistent in its regulations where there are no differences in the aircraft to justify different standards. The FAA intends to standardize the regulations wherever possible. Thus, the notice proposals for new § 27.351 and revised § 29.351 should be identical for normal and transport category rotorcraft, respectively.

The notice proposal would establish a maximum sideslip angle of 15° at V_{NE} or V_H, whichever is less, and 90° at 0.6 V_{NE}. The design sideslip angle for speeds between these two speed limits will vary directly with respect to airspeed. Of course, as an option, smaller sideslip angles may be sued when substantiated by rational analysis using the rotorcraft design characteristics and capabilities.

Ref: Proposals 27, 202, and 203; Committee I.

4–25. By revising § 29.391 to read as follows:

§ 29.391 General.

Each auxiliary rotor, each fixed or movable stabilizing or control surface, and each system operating any flight control must meet the requirements of §§ 29.395 through 29.403, 29.411, 29.413, and 29.427.

Explanation: With the adoption of new § 29.427, concerning unsymmetrical loads on the horizontal stabilizer, the general rule for control surfaces needs to include this standard. See explanation for new § 27.427.

4–26. By amending § 29.395 by revising paragraph (b) to read as follows:

§ 29.395 Control system.

* * * * *

(b) Each primary control system, including its supporting structure, must be designed as follows:

(1) The system must withstand loads resulting from the limit pilot forces prescribed in § 29.397;

(2) Notwithstanding paragraph (b)(3) of this section, when power-operated actuator controls or power boost controls are used, the system must also withstand the loads resulting from the limit pilot forces prescribed in § 29.397 in conjunction with the forces output of each normally energized power device, including any single power boost or actuator system failure;

(3) If the system design or the normal operating loads are such that a part of the system cannot react to the limit pilot forces prescribed in § 29.397, that part of the system must be designed to withstand the maximum loads that can be obtained in normal operation. The minimum design loads must, in any case, provide a rugged system for service use, including consideration of fatigue, jamming, ground gusts, control inertia, and friction loads. In the absence of a rational analysis, the design loads resulting from 0.60 of the specified limit pilot forces are acceptable minimum design loads; and

(4) If operational loads may be exceeded through jamming, ground gusts, control inertia, or friction, the system must withstand the limit pilot forces specified in § 29.397, without yielding.

Explanation: Conference proposals were considered concurrently to revise the standards to accommodate power-operated actuators, to increase the design load requirements for a control jam, and to clarify the current design practices and standards for normal and transport category rotorcraft.

One conference participant suggested that the present standards of § 29.395(b) include design standards for power control actuators. Present transport rotorcraft designs use power control systems requiring negligible pilot effort rather than a "boost" system supplementing pilot effort. The present standard refers to power boost systems. Transport category rotorcraft generally use dual, redundant power actuators and hydraulic components specified in § 29.695 (a) and (b) since manual reversion is not practicable for a modern design transport rotorcraft. Present § 29.395(b) agrees with § 29.695 (a) and (b). The control system must withstand the force output of the power device including any single failure in the power device system.

Conference discussions pertaining to the elimination of the current minimum design loads noted that § 29.395(b) permits the use of a rational analysis to derive minimum design load in lieu of the specified, 60 percent of limit pilot forces, minimum design loads. The conference proposed revision to § 29.395(b) that would allow use of lower loads derived from a rational analysis is therefore unnecessary. Another participant suggested elimination of the current minimum design loads because of possible control system jam could require pilot forces or effort in excess of 60 percent of limit pilot forces to clear a jam.

In light of the foregoing, the notice proposal would revise the standard to include power actuators, would separate present § 29.395(b) into three subparagraphs to clarify the standard, and would add paragraph (b)(4) to increase the minimum design loads, if appropriate, to account for a possible jam in the controls, ground gusts, control inertia, or excessive friction. Paragraph (b)(4) is the only proposed substantive change. The control system from the crewmember to the control surface or rotor blades would be subject to the appropriate loads specified in paragraph (b) of this proposed standard.

A proposed amendment to § 27.395(b) for normal category rotorcraft, also included in this notice, would result in a standard comparable to proposed § 29.395(b). The FAA is committed to standardization of airworthiness rules whenever necessary and possible, such as this instance. See explanation for proposed § 27.395 contained in this notice.

Ref: Proposals 49 and 205; Committee I.

4–27. By adding a new § 29.427 following § 29.413 and before the heading, Ground Loads, to read as follows:

§ 29.427 Unsymmetrical loads.

(a) Horizontal tail surfaces and their supporting structure must be designed for unsymmetrical loads arising from yawing and rotor wake effects in combination with the prescribed flight conditions.

(b) To meet the design criteria of paragraph (a) of this section, in the absence of more rational data, both of the following must be met:

(1) One hundred percent of the maximum loading from the symmetrical flight conditions in § 29.413 acts on the surface on one side of the plane of symmetry, and no loading acts on the other side.

(2) Fifty percent of the maximum loading from the symmetrical flight conditions in § 29.413 acts on the surface on each side of the plane of symmetry, in opposite directions.

(c) For empennage arrangements where the horizontal tail surfaces are supported by the vertical tail surfaces, the vertical tail surfaces and supporting structure must be designed for the combined vertical and horizontal surface loads resulting from each prescribed flight condition, considered separately. The flight conditions must be selected so that the maximum design loads are obtained on each surface. In the absence of more rational data, the unsymmetrical horizontal tail surface loading distributions described in this section must be assumed.

Explanation: This proposal would add a new standard requiring application of unsymmetrical loads when evaluating horizontal stabilizing surfaces and certain vertical tail surfaces. The proposal was initially submitted as a revision to §§ 27.413 and 29.413. It is more appropriate and consistent with the regulatory philosophy to use the same paragraph number for the same standards found in the different Parts. The proposal would add a new paragraph, similar to § 25.427, containing the unsymmetrical loading requirements. See the explanation for proposed § 27.427.

Ref: Proposals 51 and 208; Committee I.

4–28. By amending § 29.501 by revising paragraphs (d)(3) and (f)(2)(ii) to read as follows:

§ 29.501 Ground loading conditions: Landing gear with skids.

* * * * *

(d) * * *

(3) The total sideload must be applied equally between skids and along the length of the skids.

* * * * *

(f) * * *

(2) * * *

(ii) Distributed equally over 33.3 percent of the length between the skid tube attachments and centrally located midway between the skid tubes attachment.

Explanation: See explanation for proposed amendment to § 27.501. The objective certification standards for normal and transport category rotorcraft skid landing gear have been and should remain identical.

Ref: Proposal 209; Committee I.

4–29. By amending § 29.519 by revising the title and by revising paragraphs (a), (b), and (c) to read as follows:

§ 29.519 Hull type rotorcraft: Water-based and amphibian.

(a) *General.* For hull type rotorcraft, the structure must be designed to withstand the water loading set forth in paragraphs (b), (c), and (d) of this section considering the most severe wave heights and profiles for which approval is desired. The loads for the landing conditions of paragraphs (b) and (c) of this section must be developed and distributed along and among the hull auxiliary floats, if used, in a rational and conservative manner, assuming a rotor lift not exeeding two-thirds of the rotorcraft weight to act throughout the landing impact.

(b) *Vertical landing conditions.* The rotorcraft must initially contact the most critical wave surface at zero forward speed in likely pitch and roll attitudes which result in critical design loadings. The vertical descent velocity may not be less than 6.5 feet per second relative to the mean water surface.

(c) *Forward speed landing conditions.* The rotorcraft must contact the most critical wave at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes and with a vertical descent velocity of not less than 6.5 feet per second relative to the mean water surface. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out landing.

* * * * *

Explanation: This proposal is intended to remove superfluous and obsolete standards for limited amphibians that are contained in paragraph (a). Limited amphibian configurations no longer exist. The one rotorcraft model previously certified to the limited amphibian standards was subsequently approved under "ditching" standards similar to those contained in present §§ 29.563 and 29.801. Reference to limited amphibian would be removed also from § 29.755, "Bouyancy," and § 29.803, "Emergency evacuation," since these standards are also superfluous. See the explanation for proposed §§ 29.755 and 29.803. This intention to eliminate limited amphibian standards was not discussed at the conference.

The proposal would require consideration of the wave profiles along with presently stated wave heights for water impact landing load. The words "and profiles" would be added to the standard in paragraph (a) since the wave profile or shape, including the height, determines the criticality of the wave. The words "the most critical wave" would be added to paragraph (b) emphasizing that impact with waves must be considered for landing. The words "relative to the mean water surface" would be added to paragraph (c) to clarify the definition of the vertical descent velocity. Paragraph (c) also contains an editorial change. Industry representatives at the conference expressed concurrence with such a proposal for water-based or amphibious rotorcraft.

Ref: Proposal 210; Committee I.

4–30 By revising § 29.563 to read as follows:

§ 29.563 Structural ditching provisions.

If certification with ditching provisions is requested, structural

strength for ditching must meet the requirements of this section and § 29.801(e).

(a) *Forward speed landing conditions.* The rotorcraft must initially contact the most critical wave for reasonably probable water conditions at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes. The rotorcraft limit vertical descent velocity may not be less than 5 feet per second relative to the mean water surface. A rotor lift may be used to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out touchdown.

(b) *Auxiliary or emergency float conditions.*—(1) *Floats fixed or deployed before initial water contact.* In addition to the landing loads in paragraph (a) of this section, each auxiliary or emergency float, or its support and attaching structure in the airframe or fuselage, must be designed for the load developed by a fully immersed float unless it can be shown that full immersion is unlikely. If full immersion is unlikely, the highest likely float buoyancy load must be applied. The highest likely buoyancy load must include consideration of a partially immersed float creating restoring moments to compensate the upsetting moments caused by side wind, unsymmetrical rotorcraft loading, water wave action, rotorcraft inertia, and probable structural damage and leakage considered under § 29.801(d). Maximum roll and pitch angles determined from compliance with § 29.801(d) may be used, if significant, to determine the extent of immersion of each float. If the floats are deployed in flight, appropriate air loads derived from the flight limitations with the floats deployed shall be used in substantiation of the floats and their attachment to the rotorcraft. For this purpose, the design airspeed for limit load is 1.11 of the float deployed airspeed operating limit.

(2) *Floats deployed after initial water contact.* Each float must be designed for full or partial immersion prescribed in paragraph (b)(1) of this section. In addition, each float must be designed for combined vertical and drag loads using a relative limit speed of 20 knots between the rotorcraft and the water. The vertical load may not be less than the highest likely buoyancy load determined under paragraph (b)(1) of this section.

Explanation: See the explanation for proposed § 27.563. The proposal would add standards for forward speed landings and for float immersion in addition to retaining the reference to § 29.801(e) for objective structural design standards.

Ref: Proposal 258; Committee I

4–31. By amending § 29.571 by revising paragraphs (a) introductory text and (a)(4) to read as follows:

§ 29.571 Fatigue evaluation of flight structure.

(a) *General.* Each portion of the flight structure (the flight structure includes rotors, rotor drive systems between the engines and the rotor hubs, controls, fuselage, landing gear, and their related primary attachments), the failure of which could be catastrophic, must be identified and must be evaluated under paragraph (b), (c), (d), or (e) of this section. The following apply to each fatigue evaluation:

* * * * *

(4) The loading spectra must be as severe as those expected in operation, including but not limited to external cargo operations, if applicable, and ground-air-ground cycles. The loading spectra must be based on loads or stresses determined under paragaph (a)(3) of this section.

* * * * *

Explanation: See the explanation for proposed § 29.571. The objective standards for fatigue evaluation of transport and normal category rotorcraft have been and should remain equal.

Ref: Proposals 216 and 217; Committee I.

4–32. By amending § 29.613 by revising paragraph (b) and the introductory text of paragraph (d) and by adding a new paragraph (e) to read as follows:

§ 29.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraphs (d) and (e) of this section, compliance with this paragraph must be shown by selecting design values which assure material strength with the following probability—

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence; and

(2) For redundant structures, those in which the failure of individual elements would result in applied loads being safely distributed to other load-carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(d) Design values must be those contained in the following publications (available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120) or other values approved by the Administrator:

* * * * *

(e) Other design values may be used if a selection of the material is made in which a specimen of each individual item is tested before use and it is determined that the actual strength properties of that particular item will equal or exceed those used in design.

Explanation: See explanation for proposed § 27.613.

Ref: Proposals 64, 65, 223, and 224; Committee I.

§ 29.629 [Amended]

4–33. By amending § 29.629 by removing the word "part" and inserting in place thereof the words "aerodynamic surface."

Explanation: See explanation for § 27.629.

Ref: Proposal 226; Committee I.

4–34. By revising § 29.663 to read as follows:

§ 29.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing through analysis or tests that malfunction or failure of a single means will not cause ground resonance.

(b) The probable range of variations, during service, of the damping action of the ground resonance prevention means must be established and must be investigated during the test required by § 29.241.

Explanation: See explanation for proposed § 27.663(a). The proposed revision to paragraph (b) is not substantive. The proposal would require that the probable range of damping be established as well as investigated. This notice proposal for § 29.663(b) would result in a standard identical to the present § 27.663(b).

Ref: Proposal 230; Committee I.

4–35. By adding a new § 29.674 to read as follows:

§ 29.674 Interconnected controls.

Each flight control system must provide for safe flight and independently operate after a malfunction, failure, or jam of any interconnected control, such as engine and collective or collective and directional.

Explanation: See explanation for proposed § 27.674.

Ref: Proposal 68; Committee I.

4–36. By amending § 29.727 by revising paragraph (c) to read as follows:

§ 29.727 Reserve energy absorption drop test.

* * * * *

(c) The landing gear must withstand this test without collapsing. Collapse of the landing gear occurs when a member of the nose, tail, or main gear will not support the rotorcraft in the proper attitude or allows the rotorcraft structure, other than landing gear and external accessories, to impact the landing surface.

Explanation: Even though no one submitted a conference proposal to change § 29.727, the agency proposes to amend § 29.727 in the same manner as § 27.727. The regulatory philosophy of the drop test standard for transport category rotorcraft landing gear should be identical to the normal category standard. Size of the rotorcraft does not influence this test criterion. See explanation for proposed § 27.727 for further information.

Ref: Proposal 72; Committee I.

§ 29.755 [Amended]

4–37. By amending § 29.755 by removing the designator "(a)" from paragraph (a), and by removing paragraph (b).

Explanation: This notice proposal would remove the superfluous standards for limited amphibian hull buoyancy. The standards contained in present §§ 29.563 and 29.801 for rotorcraft "ditching configurations" are sufficient.

See explanations for proposals concerning §§ 29.519 and 29.803. These sections are associated standards for limited amphibians.

4–38. By amending § 29.783 by revising paragraphs (b) and (c) to read as follows:

§ 29.783 Doors.

* * * * *

(b) Each external door must be located and appropriate operating procedures must be established to ensure that persons using the door will not be endangered by the rotors, propellers, engine intakes, and exhausts when the operating procedures are used.

(c) There must be means for locking crew and external passenger doors and for preventing their opening in flight inadvertently or as a result of mechanical failure. It must be possible to open external doors from inside and outside the cabin even though persons may be crowded against the door on the inside of the rotorcraft. The means of opening must be simple and obvious and so arranged and marked that it can be readily located and operated.

* * * * *

Explanation: A proposed revision to § 29.783(b) would remove "disc" following "rotor" and add additional hazards which should be considered when evaluating the location of passenger as well as other doors. Helicopter operators may load and/or unload passengers and cargo/baggage with the engine running and the rotors turning. Listing these additional hazards in the standards would assure that appropriate conditions are considered in the rotorcraft design. In addition, the notice proposal would include each external door, not just passenger doors, in the evaluation. The notice proposal would require "operating procedures" for each external door, as prescribed, rather that having persons follow "appropriate instructions" as currently stated for use of passenger doors. This change would agree with § 25.783(d) for airplane doors. The objective of the standards, to protect persons who use doors, would be clarified. The proposed revised wording should be easier to understand. The means of opening must be marked per § 29.783(c). Any operating procedures would be similarly marked adjacent to or on the door as well.

One conference proposal would include a standard for persons crowding against doors, including inward opening passenger doors. This proposal stems from § 25.783(b) for transport airplanes. Industry concurs with the conference proposal provided the applications of this proposed standard are consistent with the previous application to airplane doors. That is, the standard should contain relief for inward opening doors. The FAA concurs with the conference proposal, except that proposed § 29.783(c) does not provide relief for crowding against inward opening doors since such door designs are highly unlikely for rotorcraft, and the relief found in § 25.783(b) in this respect is unnecessary.

Another conference proposal, in part, would make § 29.783(e) applicable to hinged, outward opening doors, thereby excluding other doors (such as inward opening doors and sliding doors) from the standards. The conference proposal would have also qualified direct visual inspection means for locking mechanisms of doors.

The comments and objectives pertaining to this latter proposal have been carefully reviewed. The conference proposal would exclude inward opening and sliding doors from further compliance with the direct visual inspection means of the locking mechanism and with the visual means to signal when normally used external doors are closed and fully locked, thereby reducing the existing level of safety for such doors. Justification for this reduction was not submitted.

The present standard requires that all external doors, regardless of type, must provide means for direct visual inspection of the locking mechanism by crewmembers to determine whether they are fully locked. The direct visual inspection means of the locking mechanism may be in the form of indicator flags, possibly handle position for handles with positive lock features that also meet the standards of § 29.783(c) or equivalent positive position indicators. These direct visual inspection means comply with the current requirements. Application of the current standard is sufficient, and incorporation of the conference proposal is not necessary. Note that the door locking features must comply with the standards of § 29.783(c).

The direct visual inspection means do not give warning or command to the pilot or flightcrew while at their stations and cannot be classified as a signal. The current standard requires a visual signal means to the appropriate crewmembers when normally used external doors are closed and fully locked. Justification is not provided for removing such a signal. The current rule would permit usage of reliable mechanical visual means, provided the mechanical device functions as a signal to the appropriate crewmember and not as an inspection device.

It was proposed to remove sliding doors from § 29.783 (e) and (f). The rationale for the conference proposal focuses on operational requirements and external cargo uses with the doors open in flight. Specific operational requirements are not the subject of Part 29. However, flight with doors fully open or removed is presently evaluated during certification, when requested.

This facilitates operational approvals under Part 133. The safety aspects of the proposed change to remove sliding doors are not adequately addressed by the proponent. The conference proposal is not accepted because it would result in a decrease in the existing level of safety presently found on sliding doors.

Economic data in support of the conference proposals were requested at the conference, but none have been provided for the docket.

Ref: Proposals 244, 245, 246, and 247; Committee I.

4–39. By amending § 29.803 by removing and reserving paragraph (c)

and by adding new paragraphs (d) and (e) to read as follows:

§ 29.803 Emergency evacuation.

* * * * *

(d) Except as provided in paragraph (e) of this section, rotorcraft in any of the following three categories must be tested in accordance with the conditions and procedures contained in Appendix D of this Part to demonstrate that the maximum seating capacity, including the crewmembers required by the operating rules, can be evacuated from the rotorcraft to the ground within 90 seconds:

(1) Rotorcraft which have a seating capacity of more than 44 passengers.

(2) Rotorcraft which have all of the following:

(i) Ten or more passengers per passenger exit as determined under § 29.807(b).

(ii) No main aisle, as described in § 29.815, to each row of passenger seats.

(iii) Access to each passenger exit for each passenger by virtue of design features of seats, such as folding or break-over seat backs or folding seats.

(3) Rotorcraft that have only side-of-fuselage exits and that have a maximum seating capacity of 10 or more passengers.

(e) A combination of analysis and tests may be used to show that the rotorcraft is capable of being evacuated within 90 seconds under the conditions specified in § 29.803(d) if the Administrator finds that the combination of analysis and tests will provide data, with respect to the emergency evacuation capability of the rotorcraft, equivalent to that which would be obtained by actual demonstration.

Explanation: Section 29.803(c) concerning passenger exit standards for limited amphibians is considered superfluous and would be removed. As an example, Sikorsky Model S–61N helicopters were initially approved as "limited amphibians" rather than approved for "ditching." They were subsequently approved under objective ditching standards contained in present § 25.801. The Bell Model 212 helicopter was similarly approved for "ditching." The objective design and exit standards are now contained in present §§ 29.807(d) and 29.801(e). Thus, § 29.803(c) would be marked "[Reserved]" since these standards concern "limited amphibian" and are unnecessary and supplanted by present §§ 29.807(d) and 29.801(e). This notice proposal for § 29.803(c) was not discussed at the conference. It would not be a substantive change in the standards.

Two conference proposals address demonstrating an emergency evacuation of transport rotorcraft in an upright and in an overturned position or resting on its side. One would change § 29.807(c) to require a demonstration with an overturned aircraft. The other would change § 29.803 requiring demonstration for all rotorcraft with unconventional interiors such as those with high density seating and no lengthwise aisles.

A conference participant cited the evacuation demonstration standards for transport airplanes, but noted these standards should not be applied to all rotorcraft without research and development work. All transport airplane designs having more than 44 passengers are subject to an evacuation demonstration. The FAA concluded that a demonstration was unnecessary for evaluating features of transport airplanes with fewer than 45 passengers. The necessity for an evacuation demonstration of rotorcraft having relatively few passengers was questioned, and it was noted that the configuration of helicopter interiors and exits is a most important consideration.

In light of the conference proposals and comments, the notice proposes an emergency evacuation demonstration for: (1) Rotorcraft having more than 44 passengers; (2) rotorcraft, described as van or limousine-type interior, with rows of seats across the width of the cabin having an average of 10 or more passengers per passenger exit, no main aisle serving each row of seats, and each passenger exit accessible to each passenger by virtue of design features of seats, such as folding or break-over seat backs, or folding seats; or (3) rotorcraft having 10 or more passengers with only side-of-fuselage exits. All of the features from the second criterion must be present before a demonstration based on that criterion would be required. The third criterion in new paragraph (d) would cover the possibility that a rotorcraft with 10 or more passengers may roll over on its side, blocking the exits and doors on one side of the rotorcraft.

The first criterion would coincide with evacuation standards (§ 25.803) for transport airplanes. The second criterion would recognize design features unique to rotorcraft. These features are small, low height cabins with main entrance doors on each side of the fuselage, no passenger aisles, four or more abreast seats in a row, and exits at or adjacent to the ends of each row of seats. The doors may be used as exits in these rotorcraft, or separate exits may be located in the doors or fuselage. The third criterion would require a positive assessment of an evacuation from a rotorcraft resting on its side. This would apply to rotorcraft having 10 or more passengers and only side-of-fuselage exits.

For any one rotorcraft model, only one demonstration, using the most conservative configuration, would be required by the proposed standard. The following sequence should be used in determining what evacuation demonstration procedure to use.

First, a demonstration would be required with the rotorcraft on its side if it has 10 or more passengers and no exit or exits in the top, bottom, or ends of the rotorcraft. The most critical exit configuration would be used in the demonstration.

Second, a demonstration would be required with the rotorcraft upright if it has a van or limousine-type interior and has an exit or exits in the top, bottom, or ends of the rotorcraft.

Third, a demonstration would be required with the rotorcraft upright if it has more than 44 passengers and has an exit or exits in the top, bottom, or ends of the rotorcraft in compliance with § 29.809(c)(1). The proposal envisages small to large rotorcraft with only side-of-fuselage exits. A rotorcraft with 44 or fewer passengers having a main aisle (§ 29.815) the length of the passenger compartment and exits in the sides and top, bottom, or end would not be subject to a demonstration.

Proposed paragraph (e) of § 29.803 would allow a combination of analysis and tests, or demonstrations, as prescribed.

Emergency evacuations of transport rotorcraft having high density interior arrangements with no main aisle and evacuations of an overturned rotorcraft have been a concern. Due to rotorcraft configurations, density of seating arrangements, rows and numbers of seats, location, size, and number of exits or doors, the effectiveness of possible escape routes from each seat to the ground has been and will be difficult to evaluate. The proposals would require a positive assessment of egress for certain rotorcraft configurations described in the proposed standards. These evacuation proposals should appear primarily as a revision to § 29.803 only rather than as a revision to both §§ 29.807(c) and 29.803 as advocated by proponents. However, current § 29.807(c) specifies installation of exits other than side-of-fuselage exits in certain cases and would be changed concurrently to complement amended § 29.803. See explanation for the proposal to amend § 29.807.

The criteria or conditions for the demonstrations would be contained in

Appendix D to Part 29 of this chapter. The proposed Appendix D is contained in Item 4–47 of this notice and was derived from § 25.803(a) for transport airplanes.

This proposal incorporates the substance of the proposals for emergency evacuation submitted for discussion at the regulatory review conference.

Ref: Proposals 260 and 262; Committee I.

4–40. By amending § 29.805 by adding a new paragraph (c) to read as follows:

§ 29.805 Flightcrew emergency exits.

* * * * *

(c) Each exit may not be obstructed by water or flotation devices after a ditching. This must be shown by test, demonstration, or analysis.

Explanation: Rather than revise § 29.801(b) as proposed at the conference, both crew and passenger exit standards would be revised in this notice to ensure the exits required for evaucation in the event of a ditching would not be obstructed by water or floating devices. However, the crew exit threshold may be slightly below the waterline provided it is not obstructed. If the crew uses the passenger exit, § 29.807(d) would apply.

This aspect of the ditching configuration was not discussed at the public conference; however, it is directly related to the rotorcraft ditching configurations and protection of the occupants. See explanation for § 29.807(d).

Ref: Proposals 84 and 256; Committee I.

4–41. By amending § 29.807 by removing the "or" at the end of paragraph (c)(1); by revising paragraph (c)(2); and by adding a new paragraph (c)(3) to read as follows:

§ 29.807 Passenger emergency exits.

* * * * *

(c) * * *

(2) An evacuation demonstration, if required by § 29.803(d)(3), must be accomplished; or

(3) A rotorcraft with a maximum passenger seating capacity of nine or less must have design features that allow evacuation with the rotorcraft on its side or have design features that minimize the probability of the rotorcraft coming to rest on its side after a crash landing.

* * * * *

Explanation: A demonstration is considered necessary by a conference proposal proponent to assure safe evacuation of the rotorcraft with the rotorcraft resting on its side. A notice proposal is made hereby to add another option that would allow certification of rotorcraft with only side-of-fuselage exits by successfully completing an evacuation demonstration with the rotorcraft on its side.

The present standard, § 29.807(c), allows certification of transport rotorcraft having only side-of-fuselage exits, regardless of passenger capacity, provided the probability of the rotorcraft coming to rest on its side in a crash landing is extremely remote. In recent years, "extremely remote" has been synonymous with "extremely improbable" as related to transport airplane systems. "Extremely improbable" has been assigned a probability of occurrence value of 10^{-9} per flight hour. This probability of occurrence value, if applied to § 29.807(c), would be equal to 33,333 rotorcraft each achieving about 30,000 hours of operation without one of these rotorcraft experiencing a crash landing in which the rotorcraft came to rest on its side. The FAA has service information that would not allow approval of any transport rotorcraft using the transport category airplane systems probability value for "extremely improbable" unless exits were also located in the top, bottom, or ends of the rotorcraft.

To preclude confusion with "extremely remote" and "extremely improbable," the proposal contained herein would remove "extremely remote" and would allow approval of only side-of-fuselage exits by (1) completing an evacuation demonstration when required by proposed § 29.803(d)(3); or (2) having nine or less passengers and rotorcraft design features that either allow evacuation with the rotorcraft on its side or that minimize the probability of the rotorcraft coming to rest on its side after a crash landing.

The proposed revision to paragraph (c)(2) would require an evacuation demonstration for certain rotorcraft with the rotorcraft on its side by referring to § 29.803(d)(3). Proposed new paragraph (c)(3) would complement § 29.803(d)(3) in this notice by excluding certain small rotorcraft from the evacuation demonstration. Proposed §§ 29.803(d) and 29.807(c) would complement each other.

See explanation for revised § 29.803 for more information.

Ref: Proposal 262; Committee I.

4–42. By further amending § 29.807 by revising the introductory text of paragraph (d) and by adding a new paragraph (d)(3) to read as follows:

§ 29.807 Passenger emergency exits.

* * * * *

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, ditching emergency exits must be provided in accordance with the following requirements and must be proven by test, demonstration, or analysis unless the emergency exists required by paragraph (b) of this section already meet these requirements.

* * * * *

(3) Flotation devices, whether stowed or deployed, may not interfere with or obstruct the exits.

* * * * *

Explanation: A conference proposal was considered to revise §§ 27.801(b) and 29.801(b) by requiring a demonstration, test, or analysis that passenger and crew exits would open and be usable after emergency float bags or flotation devices are deployed and the aircraft is sitting in the water. Amending §§ 27.801(b) and 29.801(b) is not appropriate since exit standards are contained in §§ 27.807, 29.805, and 29.807.

Sections 27.807(d) and 29.807(d) pertain to "passenger ditching emergency exits." These paragraphs state that the thresholds of the exits must be above the waterline; that is, not obstructed by water. Requirements for additional obstructions should also be contained in this standard. The proposal would add new obstruction considerations for passenger exits that must be proven by demonstration, if necessary, or by an analysis. The conference proposal would also apply to required crew exits as well. To accommodate this objective, § 29.805, "Flightcrew emergency exits," would be revised to preclude obstruction from water or other causes similarly stated in § 29.807(d). See amended § 29.805 for crew exit standards.

It is acknowledged that the proposal would not necessarily require a demonstration. For configurations which are considered to have critical occupant egress capabilities due to liferaft locations and/or ditching emergency exit locations and floats proximity, an actual demonstration of egress may be required. The method of compliance could be determined during the course of certification, hopefully early in the certification program. As recommended by a conference participant, it is only necessary to evaluate the crew and passenger emergency exits required for evacuation in a ditching. If the crew uses the passenger exits, only the passenger exits would have to comply with the proposed standard. The introductory paragraph would be

revised and new paragraph (d)(3) would be added by this proposal to ensure the exits are usable. See explanation for § 27.807(d)(3) for information on the proposal for normal category rotorcraft exits.

Ref: Proposals 84 and 256; Committee I.

4–43. By amending § 29.809 by revising paragraph (f) and by adding new paragraphs (g), (h), and (i) to read as follows:

§ 29.809 Emergency exit arrangement.

* * * * *

(f) Except as provided in paragraph (h) of this section, each land-based rotorcraft emergency exit must have an approved slide as stated in paragraph (g) of this section, or its equivalent, to assist occupants in descending to the ground from each floor level exit and an approved rope, or its equivalent, for all other exits, if the exit threshold is more than 6 feet above the ground—

(1) With the rotocraft on the ground and with the landing gear extended;

(2) With one or more legs or part of the landing gear collapsed, broken, or not extended; or

(3) With the rotorcraft resting on its side, if required by § 29.803(d).

(g) The slide for each passenger emergency exit must be a self-supporting slide or equivalent, and must be designed to meet the following requirements:

(1) It must be automatically deployed and deployment must begin during the interval between the time the exit opening means is actuated from inside the rotorcraft and the time the exit is fully opened. However, each passenger emergency exit which is also a passenger entrance door or a service door must be provided with means to prevent deployment of the slide when the exit is opened from either the inside or the outside under nonemergency conditions for normal use.

(2) It must be automatically erected within 10 seconds after deployment is begun.

(3) It must be of such length after full deployment that the lower end is self-supporting on the ground and provides safe evacuation of occupants to the ground after collapse of one or more legs or part of the landing gear.

(4) It must have the capability, in 25-knot winds directed from the most critical angle, to deploy and, with the assistance of only one person, to remain usable after full deployment to evacuate occupants safely to the ground.

(5) Each slide installation must be qualified by five consecutive deployment and inflation tests conducted (per exit) without failure, and at least three tests of each such five-test series must be conducted using a single representative sample of the device. The sample devices must be deployed and inflated by the system's primary means after being subjected to the inertia forces specified in § 29.561(b). If any part of the system fails or does not function properly during the required tests, the cause of the failure or malfunction must be corrected by positive means and after that, the full series of five consecutive deployment and inflation tests must be conducted without failure.

(h) For rotorcraft having 30 or less passenger seats and having an exit threshold more than 6 feet above the ground, a rope or other assist means may be used in place of the slide specified in paragraph (f) of this section, provided an evacuation demonstration is accomplished as prescribed in § 29.803(d) or (e).

(i) If a rope, with its attachment, is used for compliance with paragraph (f), (g), or (h) of this section, it must—

(1) Withstand a 400-pound static load; and

(2) Attach to the fuselage structure at or above the top of the emergency exit opening, or at another approved location if the stowed rope would reduce the pilot's view in flight.

Explanation: While § 29.803(a) requires rapid evaluation of the rotorcraft in a crash landing with the landing gear extended or retracted, no accounting is presently required for a damaged landing gear. In case of a damaged gear, the exit threshold may be more than 6 feet from the ground but would not necessarily have a slide or rope fitted for the exit. The notice proposal would eliminate the apparent omission by including an evaluation of the descent provisions with the landing gear damaged. A slide or rope would be required only for exits more than 6 feet from the ground as defined in this section.

The standards for the exit rope would be retained in this section, but would be moved from present paragraphs (f) (1) and (2) to proposed paragraphs (i) (1) and (2). Proposed paragraph (g) would provide standards for this slide. This criterion was extracted from transport airplane standards contained in § 25.809(f)(1).

In proposed paragraph (h), relief is provided from slide requirements for rotorcraft with a passenger seating configuration of 30 or less if an evacuation demonstration is accomplished; that is, a rope or other assist means may be approved. This provision is consistent with a similar standard considered several years ago for a "commuter" type of airplane.

Ref: Proposal 263; Committee I.

4–44. By amending § 29.811 by revising paragraph (f)(1) to read as follows:

§ 29.811 Emergency exit marking.

* * * * *

(f) * * *

(1) There must be a 2-inch colored band outlining each passenger emergency exit, except small rotorcraft with a maximum weight of 12,500 pounds or less may have a 2-inch colored band outlining each exit release lever or device of passenger emergency exits which are normally used doors.

* * * * *

Explanation: The present rule requires a band outlining the exit. A conference proposal was submitted to permit identifying bands outlining exit release handles for small rotorcraft whose exits are obvious and are normally used doors for entering and leaving the rotorcraft. Four exemptions for four rotorcraft designs have already been issued to allow a 2-inch colored band outlining each crew and passenger door exit handle. The conference proposal would eliminate the necessity for further exemption, if adopted.

The proponent noted that hatches or other emergency exits that are not normally used doors must be identified by a band outlining the exit to comply with the standard. An objective of the conference proposal was that an exit outline band may be omitted for small rotorcraft designs when the cabin access provisions are reasonably obvious to the rescuers.

The notice proposal achieves the objectives and desires of the proponent. The proposal would require bands outlining each exit as presently prescribed except for normally used doors on small (12,500 pounds or less weight) rotorcraft which are qualified or approved as passenger emergency exists. Those doors/exits may have a 2-inch band, circular, oval, or rectangular around the door/exit handle lever or release device that releases the emergency exits. The standard would apply to hinged or sliding doors qualified as exits. If windows, hatches, or service doors are qualified as emergency exits, a band outlining the exit would be required. The proposal would not allow a solid color background but would require a distinct, separate 2-inch-wide band outlining the door/exit release lever or device as provided in paragraph (f)(2) of this section. Also, AC 20–47, Exterior Colored Band Around Exists on Transport Airplanes, sets forth, in part,

acceptable means of complying with the contrasting color standard contained in paragraph (f)(2).

Ref: Proposal 265; Committee I.

4–45. By amending § 29.855 by revising paragraph (a) to read as follows:

§ 29.855 Cargo and baggage compartments.

(a) Each cargo and baggage compartment must be constructed of or lined with materials in accordance with the following:

(1) For accessible and inaccessible compartments not occupied by passengers or crew, the material must be at least fire resistant.

(2) Materials must meet the requirements in § 29.853(a)(1), (a)(2), and (a)(3) for cargo or baggage compartments in which—

(i) The presence of a compartment fire would be easily discovered by a crewmember while at his station;

(ii) Each part of the compartment is easily accessible in flight;

(iii) The compartment has a volume of 200 cubic feet or less; and

(iv) Notwithstanding § 29.1439(a), protective breathing equipment is not required.

* * * * *

Explanation: The present fire protection standards, § 29.853, for passenger and crew compartment interior linings require, in part, a vertical burn test for most interior materials and a horizontal burn test for acrylic windows and other items. The present standards in § 29.855 require that each cargo and baggage compartment be constructed of, or lined with, fire resistant material. Aluminum alloys of certain thicknesses are generally proven to be a fire resistant material.

A conference proposal was made to allow an "all cargo operation," that is, carriage of cargo in the unoccupied passenger compartment, without having a fire resistant liner or any liner to protect the windows and structure from a possible compartment fire. The FAA does not agree with this. Evidence was not submitted to show that for larger compartments, the window panes would remain intact during a possible fire to prevent air (oxygen) from feeding the fire and to show that the doors and structure would remain intact until a fire could be extinguished or the rotorcraft safely landed and evacuated. A fire in a rotorcraft cargo or baggage compartment must be safely contained or suppressed by limiting oxygen or must be extinguished before loss of the rotorcraft or landing and evacuation of the rotorcraft.

Therefore, the current proposal would continue to require accessible and inaccessible compartments to be completely lined with or constructed of fire resistant materials. Nonetheless, new standards would be added to specifically identify small, easily accessible compartments of less than 200 cubic feet volume and to allow use of passenger compartment interior materials including windows in those compartments. Additionally, protective breathing equipment would not be required for approval of those small, easily accessible compartments. Operating rules may subsequently require protective breathing equipment for certain cargo operations. The materials in these small, accessible compartments would meet the appropriate "vertical and horizontal burn test" standards specified in present § 29.853(a).

This proposal is similar to airplane Class A cargo compartment classification standards in § 25.857(a) of Amendment 25–60 (51 FR 18236; May 16, 1986). Airplane fuselage cargo compartments may not be classified as "Class A" compartments. It is appropriate for the standards for airplane and rotorcraft small cargo and baggage compartments to be similar even though rotorcraft may descend and land at a greater number of available landing areas.

However, even rotorcraft operators may find that suitable emergency landing sites are not always readily available to rotorcraft when needed. Thus, fire resistant or equivalent liners specified in the standard are intended to protect structural members and to contain or suppress a possible fire in rotorcraft accessible and inaccessible cargo and baggage compartments, except as stated for small and easily accessible compartments. Present operating rules such as §§ 121.285, 127.93, and 135.87 pertain to cargo in passenger compartments.

Additionally, § 29.855(d) of Amendment 29–24 (49 FR 44422; November 6, 1984) allows use of a smoke detector as well as the fire detector previously prescribed in that standard.

It is noted that the present flammability standards of § 29.853(a) (2) and (3) pertain to cargo blankets and cargo tie down equipment used in passenger compartments.

Ref: Proposals 268 and 269; Committee I.

4–46. By amending § 29.861 by revising paragraph (b) to read as follows:

§ 29.861 Fire protection of structure, controls, and other parts.

* * * * *

(b) For Category B rotorcraft, fireproof or protected so that they can perform their essential functions for at least 5 minutes under any foreseeable powerplant fire conditions.

Explanation: A conference proposal was made to allow use of fireproof parts on Category B rotorcraft without further substantiation. Fireproof parts are presently required in paragraph (a) for Category A rotorcraft without further substantiation. Fireproof parts have been accepted in past certification programs of Category B rotorcraft without further proof of performance. The proposal would provide an alternative to the present standard and would also incorporate current practice into the standard.

A similar proposal is made to § 27.861 for normal category rotorcraft.

Ref: Proposals 88 and 270; Committee I.

4–47. By amending § 29.865 by revising introductory text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 29.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external load attaching means can withstand a limit static load equal to 2.5, or some lower factor approved under §§ 29.337 through 29.341, of the maximum external load for which authorization is requested. The load is applied in the vertical direction and in any direction making an angle of 30° with the vertical, except for those directions having a forward component. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(d) The fatigue evaluation of § 29.571(a) does not apply to this section except for a failure of the cargo attaching means that results in a hazard to the rotorcraft.

Explanation: See the explanation for the proposal to amend § 27.865. Standards for external cargo attaching means should be identical for normal and transport category rotorcraft because they are not affected by the size of these rotorcraft.

Ref: Proposals 272, 273, and 274; Committee I.

4–48. By amending § 29.1415 by revising paragraph (b)(1) to read as follows:

§ 29.1415 Ditching equipment.

* * * * *

(b) * * *

(1) Provide not less than two rafts, of an approximately equal rated capacity and buoyancy to accommodate the occupants of the rotorcraft; and

* * * * *

Explanation: This proposal was not discussed at the conference. A disparity between aircraft operating rules and the type certification standard exists. Present § 29.1415(b)(1) requires excess liferafts to allow loss of one raft of the largest rated capacity and still have adequate remaining rafts to accommodate all occupants.

The operating rules, such as §§ 91.189(a) and 135.167(a)(2), require, in part, for extended overwater operations, enough liferafts of a rated capacity and buoyancy to accommodate the occupants of the aircraft.

The proposal would eliminate the difference by revising § 29.1415(b)(1) to provide for enough rafts of a rated capacity to accommodate the occupants and would require at least two rafts as a minimum design standard. Rafts of approximately equal capacity would be required. Any overload capacity rating of the raft may not be used to determine compliance.

4–49. By adding a new Appendix D to Part 29 to read as follows:

Appendix D To Part 29—Criteria for Demonstration of Emergency Evaluation Procedures Under § 29.803

(a) Rotorcraft in upright attitude. Demonstration of compliance with § 29.803(d)(1) or (2) with the rotorcraft in an upright attitude.

(1) The demonstration must be conducted either during the dark of the night or during daylight with the dark of night simulated. If the demonstration is conducted indoors during daylight hours, it must be conducted inside a darkened hangar having doors and windows covered. In addition, the doors and windows of the rotorcraft must be covered if the hangar illumination exceeds that of a moonless night. Illumination on the floor or ground may be used, but it must be kept low and shielded against shining into the rotorcraft's windows or doors.

(2) The rotorcraft must be in a normal attitude with landing gear extended.

(3) Safety equipment such as mats or inverted liferafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the rotorcraft's emergency evacuation equipment may be used to aid the participants in reaching the ground.

(4) Except as provided in paragraph (a)(1) of this appendix, only the rotorcraft's emergency lighting system may provide illumination.

(5) All emergency equipment required for the planned operation of the rotorcraft must be installed.

(6) Each external door and exit and each internal door or curtain must be in the takeoff configuration

(7) Each crewmember must be seated in the normally assigned seat for takeoff and must remain in that seat until receiving the signal for commencement of the demonstration. For compliance with this section, each crewmember must be—

(i) A member of a regularly scheduled line crew; or

(ii) A person having knowledge of the operation of exits and emergency equipment.

(8) A representative passenger load of persons in normal health must be used as follows:

(i) At least 25 percent must be over 50 years of age, with at least 40 percent of these being females.

(ii) The remaining, 75 percent or less, must be 50 years of age or younger, with at least 30 percent of these being females.

(iii) Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger, except for a total passenger load of less than 44 but more than 19, one doll must be carried. A doll is not required for 19 or less passenger load.

(iv) Crewmembers, mechanics, and training personnel, who maintain or operate the rotorcraft in the normal course of their duties, may not be used as passengers.

(9) No passenger may be assigned a specific seat except as the Administrator may require. Except as required by paragraph (a)(12) of this appendix, no employee of the applicant may be seated next to an emergency exit, except as allowed by the Administrator.

(10) Seat belts and shoulder harnesses (as required) must be fastened.

(11) Before the start of the demonstration, approximately one-half of the total average amount of carry-on baggage, blankets, pillows, and other similar articles must be distributed at several locations in the aisles and emergency exit access ways to create minor obstructions.

(12) No prior indication may be given to any crewmember or passenger of the particular exits to be used in the demonstration.

(13) The applicant may not practice, rehearse, or describe the demonstration for the participants nor may any participant have taken part in this type of demonstration within the preceding 6 months.

(14) A pretakeoff passenger briefing may be given. The passengers may also be advised to follow directions of crewmembers, but not be instructed on the procedures to be followed in the demonstration.

(15) If safety equipment, as allowed by paragraph (a)(3) of this appendix, is provided, either all passenger and cockpit windows must be blacked out or all emergency exits must have safety equipment to prevent disclosure of the available emergency exits.

(16) Not more than 50 percent of the emergency exits in the sides of the fuselage of a rotorcraft that meet all of the requirements applicable to the required emergency exits for that rotorcraft may be used for demonstration. Exits that are not to be used for the demonstration must have the exit handle deactivated or must be indicated by red lights, red tape, or other acceptable means placed outside the exits to indicate fire or other reasons why they are unusable. The exits to be used must be representative of all the emergency exits on the rotorcraft and must be designated by the applicant, subject to approval by the Administrator. If installed, at least one floor level exit (Type I; § 29.807(a)(1)) must be used as required by § 29.807(c).

(17) All evacuees must leave the rotorcraft by a means provided as part of the rotorcraft's equipment.

(18) Approved procedures must be fully utilized during the demonstration.

(19) The evacuation time period is completed when the last occupant has evacuated the rotorcraft and is on the ground.

(b) Demonstration of compliance with § 29.803(d)(3) with the rotorcraft on its side. The conditions of paragraph (a) of this appendix must be used except for the following conditions—

(1) The rotorcraft must be resting on its side, with its landing gear extended;

(2) All available exits, those not blocked because of the rotorcraft attitude, may be used; and

(3) A floor level exit (Type I) must be used, if installed.

Explanation: The proposed appendix would contain the criteria or conditions for complying with the objective standards contained in proposed § 29.803. See explanation for § 29.803 for further information.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

4–50. The authority citation for Part 133 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4–51. By amending § 133.43 by removing the "or" at the end of paragraphs (a)(2) and (b)(1); by removing the period at the end of paragraphs (a)(3) and (b)(2); by inserting "; or" at the end of paragraphs (a)(3) and (b)(2); and by adding new paragraphs (a)(4) and (b)(3) to read as follows:

§ 133.43 Structures and design.

(a) * * *

(4) Section 21.25 of this chapter.

(b) * * *

(3) Section 21.25 of this chapter, except the device must comply with §§ 27.865(b) and 29.865(b), as applicable, of this chapter.

* * * * *

Explanation: Two conference proposals were discussed to allow use of external cargo attaching means and quick release devices approved under restricted category type certificates issued in accordance with § 21.25. Military rotorcraft generally are equipped with external cargo hooks. The published military limitations for the aircraft, as well as for the cargo hook,

are acceptable for restricted category certification without further substantiation. However, military design cargo hooks may not have quick release devices having features that comply with §§ 27.865(b) or 29.865(b).

By Amendment 133–6 (42 FR 24196; May 12, 1977), restricted category rotorcraft are allowed to be used in Part 133 operations for compensation and hire. The proposal contained herein would allow use of military rotorcraft design cargo hooks, provided the quick release devices complied with the design features specified in §§ 27.865(b) and 29.865(b). A primary and a manual release device are necessary to assure quick release of any external cargo if required in an emergency. The proposal would revise the operating rule to agree with type certification practice.

Ref: Proposals 529 and 530; Committee I.

APPENDIX—MISCELLANEOUS PROPOSALS REMOVED FROM FURTHER CONSIDERATION—THE ROTORCRAFT REGULATORY REVIEW PROGRAM

[Based on the FAA's review of the discussions at the Rotorcraft Regulatory Review Conference and the information submitted by interested persons, the following proposals considered at the conference are removed from further consideration for the reasons set forth in the following]

14 CFR (FAR section)	Proposal No.	Proponent
27.235	42	FAA
27.397	50	FAA
27.413	52	HAI and AIA
27.501	53	HAI and AIA
27.561	56	HAI and AIA
27.561	57	AECMA
27.561	58a	FAA
27.621	66	HAI and AIA
27.633	67	DGAC, France
27.725	71	AECMA
27.787	82	HAI and AIA
27.787	83	FAA
27.801	85	NTSB
27.865	90	Aerospatiale Helicopter Division (France)
27.865	91	FAA
29.235	198	FAA
29.397	206	FAA
29.413	207	HAI and AIA
29.561	211	ALPA
29.561	212	HAI and AIA
29.561	213	AECMA
29.561	214	FAA
29.561	215	CAA (UK)
29.621	225	HAI and AIA
29.631	227	CAA (UK)
29.631	228	HAI and AIA
29.633	229	DGAC, France
29.675	232	HAI and AIA
29.685	233	CAA (UK)
29.775	238	HAI and AIA
29.775	239	DGAC, France
29.787	251	ALPA
29.787	252	CAA (UK)
29.787	253	HAI and AIA
29.787	254	FAA
29.801	255	NTSB

APPENDIX—MISCELLANEOUS PROPOSALS REMOVED FROM FURTHER CONSIDERATION—THE ROTORCRAFT REGULATORY REVIEW PROGRAM—Continued

[Based on the FAA's review of the discussions at the Rotorcraft Regulatory Review Conference and the information submitted by interested persons, the following proposals considered at the conference are removed from further consideration for the reasons set forth in the following]

14 CFR (FAR section)	Proposal No.	Proponent
29.801	257	CAA (UK)
29.803	259	Aerospatiale Helicopter Corp.
29.807	261	Aerospatiale Helicopter Corp.
29.813	266	HAI and AIA
29.853	267	FAA
29.865	273	Aerospatiale Helicopter Division (France)
29.865	274	FAA
133.43	528	FAA
133.43	531	HAI

Proposals 42 and 198. The proposals would shift the standards in §§ 27.235 and 29.235, Subpart B, to Subpart D of Parts 27 and 29 of this chapter, respectively. These proposals were withdrawn by the proponent without explanation.

Proposals 50 and 206. These conference proposals would increase the amount of foot force applied to the pilot's foot controls, at each pilot station, from 130 pounds to 300 pounds for both normal category and transport category rotorcraft. At the conference, industry was opposed to this value but was agreeable to an increase in force to 200 pounds. Service experience was furnished stating that 900 helicopters designed to the present standard were used in military flight training. No failures of the foot-operated (directional) controls were reported. However, a proposal mentioned that service experience on one helicopter model in production for many years, designed to the present standard, revealed that foot-operated controls failed due to pilot-applied forces. The pilot's foot force exceeded the strength of the pedal supports. General research has revealed that a mean pedal force may exceed 300 pounds in response to critical situations. However, rotorcraft accident and incident information compiled since 1970 does not list a case of a pedal and/or pedal support failure as a result of pilot applied forces. Therefore, these proposals are not supported by the service record and are unnecessary.

Proposals 52 and 207. These proposals would delete specific minimum values for stabilizing and control surface loads or coefficients. The proposals would require surfaces to withstand the maximum forces. Sections 27.413(a)(2) and 29.413(a)(2) presently require the surfaces to withstand critical loads. The substance of the proposals is contained in the present standard. The proposed amendments are not necessary.

Proposal 53. The proposal would have amended § 27.501(a) by adding a new paragraph describing a means of complying with the standards contained in § 27.501 for skid landing gear. The proposal would specifically allow analytical strength substantiation. A rule change is not necessary because (1) analytical substantiation rather than physical test has been used in past certification programs; (2) advisory circulars are appropriate documents for providing FAA policy on means or methods of complying with certification standards; and (3) the explanation for proposed changes to § 27.727 contains information about the present standards in § 27.501.

A participant noted that the applicant for a certificate was required to conduct a static test to show the skid landing gear would not plastically deform or yield under limit loads. The standard in § 27.501(a)(3) clearly allows structural yielding as stated, and that standard takes precedence over the general rule, § 27.305. The unique feature of certain skid landing gear designs is recognized by this specific rule.

Proposals 56, 57, 58a, 211, 212, 213, 214, and 215. These proposals would have increased, in varying amounts, the design load factors for minor crash conditions. Several proposals would have a new 3g backward load design condition. In addition, proposals would have added specific design standards for restraining any item of mass that could injure an occupant.

A report prepared by the U.S. Army was submitted to the docket for consideration in this rulemaking action. Further justification and specific data in support of the various proposals were requested by the FAA; however, the information and data have not been submitted to the docket. The FAA has developed and announced a crash dynamics program plan to develop technology which will satisfy current aircraft occupant safety and survivability needs. The plan involves large and small airplanes as well as rotorcraft. Thus, proposed changes to §§ 27.561 and 29.561 will be deferred until completion of the crash dynamics program. The FAA crash dynamics program was announced in a draft advisory circular on human exposure to impact and a preview of the agency's

crash dynamics program (49 FR 37111; September 21, 1984).

Proposals 66 and 225. These proposals would identically change §§ 27.621 and 29.621 concerning critical and noncritical castings. Two facets are related to noncritical castings, and two facets are also related to critical castings.

Noncritical castings having a casting factor of at least 1.50 would be subject to visual inspections only. A factor of at least 2.00 is presently required in conjunction with visual inspections. A casting factor of 1.25 to 1.50 would be allowed without radiographic inspections, whereas radiographic inspections are presently required in conjunction with this range of factors.

Critical castings would have a reduction from present 1.25 to 1.00 for the minimum casting factor, provided materials with guaranteed properties were used. The second facet would permit testing of only one critical casting, provided the factor achieved in this test of one specimen was 1.50 or higher. This procedure or means of compliance with a 1.50 casting factor has been accepted under the present standards for many years. The rule change is not necessary.

The remaining facets of the proposals involve standards for all aircraft castings, not just rotorcraft castings. The justification for the reduction in inspection standards and in casting factors was based on military aircraft and their service experience. Corroboration of the information was requested at the conference, but none has been received. A rule change for aircraft castings is not warranted at this time.

Proposals 67 and 229. Two proposals to add new hail damage standards for IFR approvals of normal and transport category rotorcraft were withdrawn by the proponent.

Proposal 71. This proposal would have revised § 27.725(a)(1) by requiring a gear limit drop test height of at least 8 inches from the lowest point of the landing gear to the ground. The present standard requires a drop height of at least 13 inches or any lesser height but not less than 8 inches in certain circumstances as stated in § 27.725(a). Transport rotorcraft landing gear limit drop test height is at least 8 inches as stated in present § 29.725(a). Present § 27.725(a)(2) would continue to permit use of an 8-inch drop test height whenever proven for the particular rotorcraft design. The proposed rule change is unwarranted.

Proposals 82, 83, 251, 252, 253, and 254. These proposals would, generally, increase the design strength standards for cargo and baggage compartments in both normal and transport category rotorcraft. The present standards in §§ 27.787(c) and 29.787(c) specify that there must be a means to protect each occupant from injury by the compartment contents under a 4g ultimate forward inertia force. The present design standard in §§ 27.787(a) and 29.787(a) imposes vertical design loads.

The proposals would increase the forward load factor in current §§ 27.787(c) and 29.787(c) and would add sideward and upward design load factors for compartment contents. Another proposal would apply these strength or load factor standards to compartments adjacent to the crew or passenger compartment and would, therefore, exclude cargo compartments separated from these compartments by a sufficient distance. The proponent wanted to exclude cargo compartments located in the tail booms from the design standards. Another proposal would require cargo and baggage to be restrained for ultimate load factors, sideward, forward, upward, and downward, specified in §§ 27.561(b)(3) and 29.561(b)(3). This proposal has merit. However, proposals to revise the standards in §§ 27.787(c) and 29.787(c) are deferred. The FAA is committed to a program to determine appropriate standards for minor crash conditions prior to proposing changes to the occupant protection standards in §§ 27.561(b)(3), 29.561(b)(3), 27.787(c) and 29.787(c). See the discussion for Proposals 56, 57, 58, and 211 through 215 for further information. These proposals concern changes to §§ 27.561(b)(3) and 29.561(b)(3) that were also deferred.

Proposals 85 and 255. These proposals would require installation of an underwater locating device prior to certification of any "ditching" configuration approved under §§ 27.801 and 29.801. A participant noted the proposals should be considered an operational standard and should not be an airworthiness standard. The device would be installed for extended overwater flights. Accordingly, Proposals 85 and 255 were addressed in Notice No. 85–8 (50 FR 10144; March 13, 1985).

Proposals 90 and 273. These proposals would have made three identical changes to §§ 27.865 and 29.865, "External load attaching means." The proponent's proposal would (1) allow an electrically operated "backup" load release device instead of the present manual mechanical release device; (2) require a load indicator or meter and dynamometer for pilot's use to comply with the allowable load limit or weight for the cargo hook; and (3) require specific color cockpit warning lights to indicate the "release" position or loaded case for the cargo hook.

The proposal is deferred. Electrically operated "backup" devices are not as reliable as solely mechanical devices. Load indicator and dynamometers have been approved as advisory and optional equipment. The reliability and accuracy of the indicator and dynamometer were not determined or required for such approvals. The present operating and airworthiness standards are adequate to control applied weights when properly followed. It is not necessary to require hook position indicator lights. Furthermore, present § 29.1322 specifies colors for certain lights. This rule is sufficient for cargo hook position indicator lights whenever installed. An indicator light for the cargo hook loaded case required further evaluation and justification.

Proposals 91 and 274. These FAA proposals would have made identical changes to §§ 27.865 and 29.865. The proposal would separate the structural substantiation standards into those for Class A rotorcraft-load combinations (nonjettisonable loads) and those for Class B and C rotorcraft-load combinations (jettisonable loads). The proponent contends that Class A (nonjettisonable) external loads should be substantiated for the aircraft design load factors, where higher, rather than the 2.5 limit design load factor specified. Operating and service experience associated with the use of the 2.5 limit load factor has been satisfactory. this factor has been used since 1964, first in § 133.43 and later in §§ 27.865(a) and 29.865(a). No compelling proof was offered to show the standards are deficient for Class A loads. The proposals are therefore deferred from further consideration.

Proposals 227, 228, and 238. These proposals would require proof that transport rotorcraft windshields and main rotor head (controls) could safely sustain a 2- or 4-pound bird impact. the 2-pound bird would apply to transport rotorcraft of 12,500 pounds or less gross weight. A proponent believes larger rotorcraft would encounter the 4-pound bird. Transport rotorcraft are presently unpressurized and are seldom, if ever, flown at altitudes exceeding 10,000 feet above sea level except to avoid terrain. The windshields of rotorcraft are typically large and have compound curves. Transport rotorcraft have been approved for single and two pilot operations, but a passenger may sit in the seat at the second pilot station.

Main rotor pitch controls are exposed and are vulnerable to a possible bird strike; however, reports of serious damage to exposed main rotor controls have not been found. Bird strikes of rotorcraft windshields have been reported. However, the damage incurred in these cases does not exceed the anticipated cost of requiring bird resistant or bird proof windshields for all new transport rotorcraft designs.

Safety benefits of a bird resistant windshield design are difficult to assess from the current rotorcraft statistics. Nevertheless, the possible benefits do not outweigh the cost of certifying and installing a bird resistant windshield. Executive Order 12291 requires that benefits should exceed costs.

Bird resistant windshields have been approved as an optional or voluntary design feature for a few transport rotorcraft designs. Birds weighing 2 and 4 pounds have been used in tests of these optional design windshields. Voluntary installation and proof of bird resistant windshields are encouraged to enhance safety of transport rotorcraft operations. Since preliminary data reveal costs would probably exceed benefits, these proposals are deferred.

Proposal 232. The proposal would revise § 29.675(a) to reflect current technology for control systems. The present standard specifies that the control systems have stops to positively limit the range of travel.

The rule does not preclude use of more than one set of stops if necessary or appropriate for the design. Whenever additional stops are installed, appropriate design loads, whether pilot effort or actuator maximum output loads, must be imposed on the stops. This criterion stems from the present standards in §§ 29.675 and 29.395. The proposed change is unnecessary and deferred.

Proposal 233. The proposal would have amended § 29.685 by revising paragraph (d)(10) to require inspection provisions for other various parts of the control system which necessitate periodic inspections. It is noted that § 29.685(d) deals with cable control system design standards only. Identical standards are contained in §§ 23.268(a)(3) and 25.689(f) for airplanes. Present § 29.611, "Inspection provisions," requires inspection provisions for cable control systems as well as other types of control systems when necessary for recurring inspections. The proposed rule change for cable control systems is unnecessary because the present standards are sufficient to achieve the objective of the proposal.

Proposal 239. The proposal was withdrawn by the proponent in favor of Proposal 228. See explanation for Proposals 227, 228, and 229.

Proposal 257. The proposal would add specific wave height to length ratios for both Category A and B rotorcraft for proof of capsize stability on the water. In addition, one compartment of the buoyancy flotation device would be deflated or flooded and other likely structural damage would be considered in the stability evaluations. Buoyancy of fuel tanks would be allowed, but reference to any jettisonable volume of fuel would be removed from the present rule. A standard would be added for model tests and for conditions used in these tests. The proponent contends the present standard is not sufficiently precise and submitted the proposal to correct this.

A participant suggested that rather than change the standard, the FAA issue an advisory circular containing these criteria as a means of complying with the present objective standards in §§ 27.801(d) and 29.801(d). The proposal is deferred for a possible advisory circular since the standards are sufficient.

Proposal 259. The proposal would require antiskid material on external surfaces used for emergency egress. The proposal was withdrawn by the proponent.

Proposal 261. The proposal would add a new paragraph to § 29.807(c) requiring an evacuation demonstration of certain rotorcraft designs with the rotorcraft on its side. The proposal was withdrawn by the proponent.

Proposal 266. This proposal would revise the standards for access to emergency exits by adding a new paragraph (d) to § 29.813. Certain high density, "wide body," or compact interior configurations having 20 or more passengers would be excluded from complying with the present unobstructed exit opening and exit access standards. The unobstructed exit opening and exit access standards are necessary to allow rapid evacuation of the rotorcraft. Justification for this HAI and AIA proposal is quoted for reference. "Current requirements are not adoptable to helicopters of the "wide body" configuration, therefore, a statement is necessary to exclude this configuration helicopter from § 29.813." This and the oral justification given during the conference were insufficient. As noted during the conference, applicants for type certification of "wide body" configurations may petition for an equivalent safety determination and present the arguments and specific design features that might exclude the design from literal compliance with § 29.813(c) and (c)(1). The proposal is deferred for further consideration.

Proposal 267. This proposal would add standards for flammability of materials used in crew and passenger compartments. The proposal was withdrawn by the proponent since the present flammability standards in § 29.853 are adequate.

Proposal 528. The proposal was submitted by the FAA and was withdrawn by the FAA without conference discussion.

Proposal 531. The proposal would revise § 133.43(c) by deleting any reference to structural operating limits for Class C rotorcraft-load combinations. Class C rotorcraft-load combinations are cable laying, wire stringing, etc. The proponent suggests that the operational checks or demonstrations in present § 133.41(d) would be sufficient for airworthiness requirements and would be adequate for proof of specific "structural" evaluation of the external cargo attaching means. The proponent contends these requirements represent structural design limits that should be contained in rotorcraft certification standards of Parts 27 and 29 of this subchapter.

The proposal would require the rotorcraft manufacturer to anticipate the particular use of a fleet of rotorcraft and to prove structural design requirements and limitations for unique uses in Class C rotorcraft-load combinations. By such a rule change to § 133.43(c), the operator would not be obligated to evaluate his unique use of the device or to assure that a wire stringing device installation, for example, would be within aircraft design limitations proven by the manufacturer.

Structural design limitations are established for a type design under §§ 27.865 and 29.865 for external cargo configuration attaching means. Certain structural limits are known. Class C rotorcraft-load combinations are generally unique and have innovative equipment. The operator, the FAA, and the rotorcraft manufacturer, if necessary, may work together using the limits approved under present §§ 27.865 and 29.865 to arrive at specific allowable limits, if needed, for

complying with the requirements of § 133.43(c) that pertain to Class C rotorcraft-load combinations.

The manufacturer cannot envision all possible "external cargo" uses for each rotorcraft design. Class C rotorcraft-load combinations present very unique load cases and should be approved on an individual basis. Present § 133.43(c) correctly provides for this evaluation. The proposal is deferred.

Issued in Fort Worth, Texas, on March 14 1988.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-5986 Filed 3-18-88; 8:45 am]

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Monday
March 21, 1988

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Parts 3000 et al.

Minerals Management; Onshore Oil and Gas and Geothermal Leasing; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280

[AA-620-08-4111-02-24-10]

Minerals Management; General: Oil and Gas Leasing: Noncompetitive Leases: Competitive Leases: Oil and Gas Leasing—National Petroleum Reserve-Alaska: Onshore Oil and Gas Operations: Onshore Oil and Gas Unit Agreements—Unproven Areas: Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations covering competitive and noncompetitive onshore oil and gas leasing on Federal mineral lands managed by the Bureau of Land Management, including National Forest System lands, in order to comply with the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203), enacted as part of the Omnibus Budget Reconciliation Act of 1987. Also, this proposed rulemaking contains amendments to implement bonding and reclamation provisions contained in the Act as well as revisions to bonding requirements recommended by a Bureau of Land Management task force that reviewed bonding procedures for oil and gas and geothermal resources leasing.

DATE: Comments should be received by April 21, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Judith I. Reed, (202) 653–2194

or

Ted Hudson, (202) 343–8735.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would make changes in the regulations governing the onshore oil and gas leasing program of the Bureau of Land Management that are required by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (the Act) of December 22, 1987 (Pub. L. 100–203). The Act further requires that a final rulemaking be promulgated within 180 days following its enactment. Because of the short statutory deadline, the Bureau of Land Management is requesting public comments to be submitted within a 30-day comment period. The changes proposed are discussed under their appropriate Parts.

Part 3000—Minerals Management; General

The definition of "proper BLM office" would be amended in § 3000.0–5(f) of this proposed rulemaking to remove the provision for filing simultaneous oil and gas lease applications in the Wyoming State Office and replace it with a provision for filing competitive parcel nominations in such Bureau of Land Management office as may be specified by the Director in the List of Lands Available for Competitive Nominations or in a notice issued by the Bureau in accordance with the regulations in Subpart 3120 of this rulemaking.

A new § 3000.9 referencing the enforcement provisions of section 5108 of the Act would be added to this Part. This provision would state that these provisions shall be enforced by the United States Department of Justice.

Part 3100—Oil and Gas Leasing

Section 3100.0–3 would be amended to include the authority for the prohibition of leasing in the various categories of wilderness study areas listed in revised section 43(a) of the MLA. Also, the special leasing provisions and restrictions for designated wilderness lands would be moved from § 3109.3 to § 3100.0–3.

Section 3100.0–5 would be amended by adding definitions of "offer for noncompetitive lease" and "bid" and by removing the definitions for "favorable petroleum geological province" and "known geological structure," both of which are made obsolete by the Act. Also removed would be the present provisions of § 3100.3, which applies the concepts of known geological structure and favorable petroleum geological province to determine whether lands should be leased competitively or noncompetitively, that were made obsolete by the Act.

Section 3100.4 concerning options would be renumbered as § 3100.3.

A new § 3101.1–4 would be added by this proposed rulemaking to address modification of lease terms and stipulations in accordance with section 5102(d) of the Act.

Section 3101.7 would be amended to clarify the coordination, review, consultation, consent, and appeals provisions for lands under consideration for leasing, the surface of which is administered by a surface managing agency other than the Bureau of Land Management. This applies particularly to National Forest System lands, where leasing may occur only when there is no objection from the Secretary of Agriculture.

Section 3101.8 would be amended by the proposed rulemaking to provide a time frame of 30 days instead of 90 days in which the entity could suggest lease stipulations or file any objections it may have to lease issuance. The shorter time frame is necessary to meet the requirements of the Act for lease issuance within 60 days of determining priority, and is considered reasonable since such an entity would have provided comments and stipulations prior to the lands being offered for competitive leasing. Noncompetitive offers filed after completion of the competitive process would require a check only to determine if any changes have occurred which would require additional comments or stipulations.

Section 3102.1 would be amended to provide that a lease cannot be issued to any person or entity that is not in compliance with the act, including anyone who has failed or refused to comply with the reclamation requirements and other standards as required by section 5102(d) of the Act.

Section 3102.5 would be amended by requiring certification that a lessee or potential lessee is not in violation of section 5108 of the Act concerning fraudulent activities and is in compliance with the reclamation requirements established in section 5102(d) of the Act. Section 3102.5–1(f) would specify when noncompliance with reclamation requirements of the Act would begin, thereby prohibiting issuance of leases or approval of assignments/transfers, and would provide for cancellation of any lease issued or transfer/assignment approved during the period that the entity was in violation of the reclamation requirements.

A new § 3102.6 would be added to set forth the procedures under which an agent may sign and file lease-related documents on behalf of a principal. This new section is being reproposed subsequent to the June 12, 1987, proposed rulemaking. That proposed rulemaking made a distinction between the procedures needed for an attorney-in-fact and an agent to act on behalf of a lessee or potential lessee. The need for

these procedures was made obsolete by the new law.

Section 3103.1–1 would be amended to remove currency or cash as an acceptable form of remittance in order to avoid security problems, and to allow for use of other arrangements, such as electronic wire transfers and credit cards, as may be determined acceptable by the Bureau of Land Management.

Section 3103.2–1(a) would be amended to require payment of the first year's rental for parcels at the time nominations or competitive bids are made. The intent of this requirement is to ensure that parcel nominations and bids are serious and that the Federal Government promptly obtain all revenues due.

Section 3103.2–1(b) would be amended to provide that payment of an incorrect amount of first year's rental based on an incorrect acreage indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale is curable within 10 days of notice of the error.

Section 3103.2–2 would be amended to specify the rental rate for all competitive and noncompetitive leases issued after enactment of the Act, including leases issued under special leasing acts in Subpart 3109 of this title. For both competitive and noncompetitive leases the rental would be set at the minimum rate of $1.50 per acre for the first five years, to be increased to $2 per acre for each year thereafter. This is in accordance with section 5102(c) of the Act. The proposed regulations would provide for the following exceptions to this rental rate. Leases issued prior to enactment of the Act would remain at the rate specified in the lease. Grandfathered applications, offers, and bids received before, but issued after, enactment would carry the rate specified in the regulations in effect on December 22, 1987. Leases issued under former Subpart 3112 on or after February 19, 1982, which required a rental increase to $3 per acre in the sixth year, under the proposed rulemaking would have a rental increase only to $2 per acre. These leases had been granted a rental reduction through February 1, 1989, by the Secretary of the Interior in accordance with the authority under section 39 of the Mineral Leasing Act. Under this proposed rulemaking the annual rental rate would increase to $2 on the rental due date after February 1, 1989. A determination that the lands are in a known geological structure or favorable petroleum geological province made after enactment of the Act would not affect rental rates of leases grandfathered by the Act. Exchange and renewal leases would carry a $2 rental rate. The proposed regulatons also clarify that the lessee shall pay an annual rental in addition to compensatory royalty assessed on nonproducing leases, consistent with an opinion of the Office of the Solicitor, Department of the Interior (M–36546, January 7, 1959). Additionally, under the proposed rulemaking, reinstated competitive and noncompetitive leases and converted unpatented oil placer mining claims issued under Subpart 3108 would no longer be affected by a determination of a known geological structure or of a favorable petroleum geological province.

Section 3103.3–1 would be amended to make it clear that the royalty rate for new competitive and noncompetitive leases shall be fixed at 12½ percent, but that the royalty rate for leases issued after enactment of the Act for offers and bids made prior to the enactment date would be as provided in the regulations in effect on December 22, 1987. It also would provide for a fixed 12½ percent royalty rate on exchange and renewal leases issued after the effective date of the regulations. The proposed rulemaking also would restore the provision inadvertently omitted in the July 1983 rulemaking that allows leases that qualify under the provisions of the Act of August 8, 1946 (30 U.S.C. 226c) to apply for a limitation of a 12½ percent royalty rate.

Section 3103.3–2(a) would be amended to provide that leases issued under the authority of the new law shall pay a minimum royalty in lieu of rental for leases in production, which would be not less than the rental that would otherwise be required for that lease year. This provision is in accordance with section 5102(c) of the Act. The section also would be amended to clarify the minimum royalties for existing leases and those leases issued from applications, offers, or bids made before the date of enactment of the Act.

The proposed rulemaking would amend section 3104 to clarify that bonding is required before surface disturbing activities related to drilling operations can be authorized, and to list the factors, such as reclamation requirements, used to determine the minimum bond amount. This section also would be amended, in accordance with the Act, to require bonding in an amount sufficient to ensure adequate reclamation. Presently, surface disturbing activities performed on a lease are covered by either a $10,000 lease bond, a $25,000 Statewide bond, or a $150,000 nationwide bond. Recent studies of the adequacy of these bonds indicated that these bond amounts help ensure that an operator will adequately reclaim well sites and surface disturbances, primarily because of the operator's potential inability to qualify for future bond coverage or the threat that the operator's credit rating will be jeopardized, should default occur. The ability of the Bureau of Land Management or the U.S. Forest Service to require additional bond coverage and, for most operators working in environmentally sensitive areas, the desire to maintain a good public image and a good working relationship with the Bureau, U.S. Forest Service, and the public also are strong factors in ensuring compliance with operations and reclamation requirements. Provisions of the Act that require the denial of assignments and prohibit issuance of new leases to an entity or related affiliate when such entity has failed to comply with reclamation requirements, including the proposal in this rulemaking under § 3104.5 to require 100 percent bond coverage for an entity which has failed to comply with reclamation requirements over the past 5 years, would further guarantee complete and timely reclamation.

Establishment of national reclamation standards would not be appropriate because of the diverse land surfaces, vegetation, animal life, soil types, etc., and the uniqueness of many surface disturbances. Therefore, standards for reclamation and mitigation measures to minimize adverse impacts are established by Bureau and Forest Service personnel during the onsite inspection as part of the review of each Application for Permit to Drill and the accompanying surface use plan of operations, using national guidance and recommendations provided by the joint Bureau of Land Management/Forest Service "Oil and Gas Surface Operating Standards for Oil and Gas Exploration and Development," Second Edition, August 1978, which is currently undergoing further revision for a third edition.

The proposed rulemaking would amend Subpart 3104 to incorporate provisions identified as necessary after consideration of the comments received on a proposed rulemaking published in the **Federal Register** on May 1, 1985 (50 FR 18614). That proposed rulemaking would have amended the existing regulations covering fluid mineral bonding requirements and would have increased the existing bond amounts which have been adjusted only once since 1920.

That proposed rulemaking received a mixed response from the public. Most of the public comments supported the amendments that would have

consolidated bond forms, but nearly all of the comments opposed an increase in the bond amount. The opposition stemmed from concerns about industry's ability to obtain new bonds at the proposed higher amounts, the current economic state of the oil industry, and the "business health" of surety companies.

Because of the concerns expressed in those comments, the Bureau of Land Management convened a task force composed of three Bureau of Land Management State Directors and a representative from the Minerals Management Service. In addition, representatives from the U.S. Forest Service and the Office of Surface Mining Reclamation and Enforcement participated as *ex officio* members. This task force was directed to review bonding issues, solicit industry views, evaluate various bonding alternatives, and provide reccommendations to the Director of the Bureau of Land Management for consideration.

After an extensive study of the bonding issue, including a review of State government and private industry bonding requirements, the task force developed final recommendations. In December 1986, the Director of the Bureau of Land Management approved the recommendations, with certain amendments. One of the recommendations approved by the Director was to allow the use of letters of credit. The proposed rulemaking at § 3104(c)(5) would allow the use of a irrevocable letter of credit. The letter of credit, to be acceptable, would have to be issued by a financial institution, be irrevocable for the term agreed upon, and payable only to the Department of the Interior as the agent. In the event of noncompliance with any lease terms, the Bureau of Land Management could demand from the issuing financial institution immediate payment up to and including the face amount of the letter of credit.

The proposed rulemaking also includes bonding revisions not directly addressed by the bonding task force. One revision of § 3104.1(c) would eliminate cash as an acceptable form of personal bond. This is due to concerns expressed by the Federal Reserve Board and Bureau of Land Management field offices that included concerns about sophisticated counterfeiting techniques and security problems involved in accepting and handling large sums of cash.

The elimination of cash as an acceptable form of bonding should not pose any problems to industry, because Bureau field offices have advised that a bond in the form of cash is rarely submitted.

Another proposed revision in § 3104.1(c) would allow personal bonds to be submitted in the form of a certificate of deposit. The certificate of deposit would have to be issued by a Federally insured financial institution and grant the Secretary of the Interior full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. Furthermore, Secretarial approval would be required prior to allowing any party to redeem the certificate of deposit.

The proposed rulemaking would revise § 3104.2 to clarify that a lease bond may be filed by either the lessee, the owner of operating rights (sublessee), or the operator, thus removing the distinction between operator's bonds and lessee's bonds. This revision also is made in §§ 3104.3 and 3104.4 of this proposed rulemaking.

The proposed rulemaking also would amend § 3104.5 to provide regulatory authority and standards for the authorized officer to ensure that bonding levels are adequate under section 5102(d) of the Act. Paragraph (a) of this section of the proposed rulemaking would require 100 percent bond coverage for a proposed operation if the operator has failed to comply with reclamation requirements during the past 5 years. The 5-year time frame was determined by the Bureau of Land Management to be a reasonable period to observe the operator's compliance and to provide an indication of the operator's intent to comply with reclamation requirements. Failure to comply with the reclamation requirements would be evidenced by a demand placed by the Bureau on the opeator's bond or other financial guarantee during that period. This section also would allow the authorized officer to require an increase in the amount of any bond when the operator is determined to be a risk.

Section 5103 of the Act authorizes the Secretary of the Interior to disapprove assignments of leases or portions thereof that contain less than 640 acres outside of Alaska, or less than 2,560 acres within Alaska. It also continues to allow the Secretary broad discretion to disapprove assignments of a separate zone or deposit under any lease or a part of a legal subdivision, unless such assignment is demonstrated to the satisfaction of the authorized officer as furthering the development of oil and gas. The proposed rulemaking would amend § 3106.1 to include these change.

The proposed rulemaking would amend § 3107.2–2 to specify the date when the 60-day period begins for commencement of reworking or drilling operations on a lease that is not producing, and would amend § 3107.2–3 to make it consistent with the provision of the Mineral Leasing Act. The proposed rulemaking also would amend § 3107.7 and 3107.8 by adding a provision to each for compliance with reclamation requirements that the Secretary of the Interior is authorized to enforce under section 5102(d) of the Act.

Section 3108.1 would be revised to add a provision requiring a relinquishment to be subject to the reclamation requirements in accordance with section 5102(d) of the Act.

Section 3108.3 would be amended by adding the statutory requirement that the Secretary of the Interior shall provide the lessee 30 days notice of lease cancellation for failure to comply with the provisions of the lease. Also, in accordance with the Act, the proviso that the Secretary may cancel the lease in these circumstances only if the land is not known to contain valuable deposits of oil and gas is amended to allow cancellation unless or until the lease contains a well capable of production of oil or gas in paying quantities, or is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of such production.

Part 3110—Noncompetitive leases

Part 3110 would be revised by proposed rulemaking to provide for noncompetitive leasing of lands that are not leased competitively in accordance with section 5102(a) of the Act. For clarity and convenience, this entire Part of the regulations is provided in this proposed rulemaking, including those provisions proposed in the rulemaking published in the **Federal Register** on June 12, 1987 (52 FR 22592), revised to accommodate the requirements of the Act. References throughout this Part of the regulations to "known geological structure" and "favorable petroleum geological province" would be removed, because these terms are made obsolete by the Act.

A new § 3110.1 of the proposed rulemaking would specify that the only lands available for noncompetitive leasing are those which do not receive a bid higher than or equal to the national minimum acceptable bid. Such lands, as specified in section 5102(a) of the Act, would be available for noncompetitive lease offer as stated in the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease

Sale and would remain available for a period of 2 years afterwards. No applications or offers for noncompetitive leases filed prior to the competitive offering of such lands would be accepted after the effective date of this rulemaking.

Section 3110.2 of the proposed rulemaking would revise the provisions in § 3111.1–1(b) of the existing regulations that govern priority of noncompetitive lease applications and offers. Section 3110.2(a) would provide that lease offers filed prior to the effective date of this rulemaking would be processed in accordance with the regulations in effect at the time of filing of the offer. Section 3110.2(b) of the proposed rulemaking would provide that all offers filed on the same day on or after the effective date of this rulemaking would receive priority as of the date of filing, with respect to conflicing offers, regardless of the time of day, and would be subject to a drawing in accordance with § 1821.2–3(a) of this title. Any such offer filed would not be made available for inspection by any member of the public until the day after such filing. Section 3110.2(c) would provide for priority of filings made pursuant to an opening order or other notice, which would set forth the specific provisions regarding filing procedures and priority. Section 3110.2(d) would provide that if there were multiple filings for the same parcel under former Subpart 3112, only a single priority filing would be selected. All remaining applications on that parcel would be rejected. If a lease is not issued from that application selected, the lands in the parcel would be offered competitively in accordance with the provisions of Part 3120 of the regulations.

Sections 3110.1–1, 3110.1–2, and 3110.1–3 of the existing regulations would be renumbered in the proposed rulemaking as § 3110.3–1, 3110.3–2, and 3110.3–3, respectively. Section 3110.3–3 would be revised to allow a noncompetitive lease offer to include less than 640 acres if the offer is filed on the entire parcel as it was offered by the Bureau of Land Management in the competitive process under Subpart 3120 of the regulations. This section of the proposed rulemaking also would clarify that parcels of land that meet only at a corner would not be considered contiguous for purposes of this rulemaking.

Section 3110.1–3(d) of the existing regulations would be removed in this proposed rulemaking, because under the Act this provision is no longer applicable.

Section 3110.2 of the existing regulations would be renumbered as § 3110.4 by the proposed rulemaking. Revisions would be made to the section to remove references to withdrawal of simultaneous lease applications or offers now made obsolete by the Act. This section of the proposed rulemaking also would specify that an offer may not be withdrawn until at least 60 days after the date that it was filed with the proper BLM office.

Section 3110.3 of the existing regulations would be renumbered in the proposed rulemaking as § 3110.5, and § 3111.1–1(e) and 3111.1–1(f) of the existing regulations would become paragraphs (c) and (d) in this section. These paragraphs would specify action taken on a noncompetitive offer by the authorized officer.

Section 3110.6 of the proposed rulemaking would include the provision for an amendment to a lease which was inadvertently omitted by the July 1983 rulemaking. There is a continuing need for this provision.

Subpart 3111 which would be removed in its entirety by this proposed rulemaking, but several of its provisions would be renumbered, included in Part 3110, and adapted to reflect changes required by the Act. Section 3110.7(a) of the proposed rulemaking would be revised to delete the phrase "attorney-in-fact", to provide that a duly authorized agent would be acceptable to sign an offer in lieu of the offeror, to be consistent with the proposed revisions in § 3102.6. Section 3110.7(b) of the proposed rulemaking would provide that defects in noncompetitive lease offers that require rejection under the existing regulations would be correctable subject, however, to an intervening proper and complete offer for all or part of the same lands. There would be no additional filing fee for a corrected offer. This change would expedite the leasing of lands where an error in the offer is identified during adjudication of the offer, and there is no competing offer for the same lands.

Section 3110.8 would be revised to specify the land description requirements for noncompetitive lease offers, now in § 3111.2, and would set forth separate requirements for public lands, for acquired lands, and for accreted lands. A new paragraph 3110.8–1(a) would be added to provide for the description of an offer by the parcel number as assigned by the Bureau of Land Management in the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale. Use of the parcel number in lieu of the land description would be mandatory during the month of the competitive process. An offer filed during this period of time would be required to include only the lands in the parcel as offered by the Bureau. After the end of the month, the lease offer size and description of the lands would be required to be in accordance with § 3110.3–3 as well as the remainder of § 3110.8–1 of the proposed rulemaking.

Section 3110.8–3 would allow an offeror, in describing acquired lands in an offer, to provide the acquisition or tract number assigned by the acquiring agency and maps depicting the location of the parcel, on the request of the authorized officer, without loss of priority. This change also would be included in § 3110.3–3(b)(2) of the proposed rulemaking. This section was § 3111.2–2 in the existing regulations, and has been extensively rewritten to reduce confusion in land description requirements for offers of acquired lands minerals.

Section 3111.3 of the existing regulations addressing future interest leases would be revised and renumbered as § 3110.9 by the proposed rulemaking. All reference to a supplement agreement would be removed, as in the proposed rulemaking published in the **Federal Register** on June 12, 1987. A noncompetitive future interest offer would be required to be accompanied by evidence of ownership of the present mineral interest or of agreement between the offeror and the mineral fee owner, lessee, or operator holding rights to the present fee interests in the lands.

A new § 3110.9–4 in the proposed rulemaking would provide that annual rental and royalty would not be required until the oil and gas interests vest in the United States. This section also would provide that any transfer of a future interest lease must be filed in accordance with the provisions of Subpart 3106, and that if a future interest lease is relinquished, cancelled, terminated or expired, any rights enuring from the United States also cease or terminate.

The proposed rulemaking would delete Subpart 3112 on Simultaneous Filings because the Act makes those noncompetitive leasing procedures obsolete.

Part 3120—Competitive Leases

The proposed rulemaking would amend Part 3120 of the regulations to accommodate the changes in the competitive onshore oil and gas leasing program made by the Act. For clarity and the convenience, this entire Part of

the regulations is provided in this proposed rulemaking, including provisions proposed in the rulemaking of June 12, 1987 (52 FR 22592), revised to accommodate the requirements of the Act. The presence of a known geological structure or a favorable petroleum geological province would no longer be used to determine whether a given parcel shall be leased competitively. Section 5107 of the Act provides for conducting test sales pending a final rulemaking to implement the Act. The Director of the Bureau of Land Managment has authorized two types of test sales during the period of promulgation of this rulemaking. The conduct of these test sales will provide an opportunty for the public to participate and comment on the differences in the test sales as part of this rulemaking process.

On type of test sale will involve a nomination process described in § 3120.3 of the proposed rulemaking. In this sale, nominations of parcels accompanied by a remittance of the national minimum acceptable bid were filed and processed in the Wyoming State Office for the three Bureau of Land Management State Offices testing this type of sale. Parcels have been posted on a List of Lands Available for Competitive Nominations. At the close of the 15-working day nomination period, those lands receiving nominations have been placed on a Notice of Competitive Lease Sale and will progress to an oral auction. Lands which do not receive a national minimum acceptable bid through the nomination process, having been subjected to the competitive process, would become available for noncompetitive leasing for the two-year period specified in section 5102(a) of the Act.

The second type of test sale to be conducted is a one-step competitive process, with parcels directly posted on a Notice of Competitive Lease Sale by three Bureau of State Offices and offered at an oral auction without the initial nomination step. Lands not receiving oral bids become available for noncompetitive leasing for a two-year period after conclusion of the auction at the time specified in the sale notice.

Variations on the manner of oral bidding are also being tested. Some Bureau of Land Management State Offices will require bids on a per parcel total acreage basis while others will accept bids on a pre-acre basis. No set bid increments have been specified for any of the oral auctions.

A final decision has not been made on which of the test sales or variations will become the permanent competitive leasing process. Therefore, this proposed rulemaking includes procedures for both types of sale, i.e., with or without the parcel nomination step. The public is invited to comment on both types of test sales and all variations of the compteitive leasing process.

Section 3120.1 of the proposed rulemaking would be reorganized to identify the lands subject to competitive leasing under this subpart and the other specific requirements of the Act. Section 3120.1–2 would provide that the national minimum acceptable bid would be payable on the gross parcel acreage rather than net acreage for lands in which the United States owns a fractional interest. Section 3120.1–3 would provide for suspension of a specific lease parcel and not the entire sale if a protest or appeal is made against inclusion of any specific parcel in the oral auction.

Section 3120.2 of the proposed rulemaking would specifiy the lease terms. Section 3120.2–3 would be revised to make the maximum competitive lease size not more than 2,560 acres outside Alaska, or 5,760 acres within that State, as required by section 5102 of the Act.

Section 3120.3–1 would provide the flexibility for the Bureau either to establish an informal nomination process or to continue the formal process now being tested in sales in certain Bureau of Land Management State Offices. In the informal process, the Bureau may request expressions of interests or other appropriate means to identify lands for competitive bidding. Proposed § 3120.3–2 would provide a formal nomination procedure. Parcel nominations may be requested to be submitted on a form approved by the Director, and the List of Lands Available for Competitive Nominations may specify that the completed nomination forms be submitted either to the State office having jurisdiction over the lands or to a central Bureau office, i.e., the Wyoming State Office. The formal nomination process would require the posting by the Bureau State Offices of a List of Lands Available for Competitive Nominations, submission of a nomination form approved by the Director and payment by each nominator of the national minimum acceptable bid, the first year's rental, and a $75 administrative fee for each parcel nomination. Withdrawal of a nomination would be prohibited. Signature on the nomination form would constitute a binding offer to lease and allow lease issuance without further signature by the nominator if the nominator is the highest bidder.

Sections 3120.3–5 and 3120.3–6 of the proposed rulemaking would provide for inclusion of nominated parcels in a Notice of Competitive Lease Sale, and for parcels receiving no minimum bid through the nomination process to be available for noncompetitive offers in accordance with section 5102 of the Act. The date noncompetitive offers could be made would be specified in the List of Lands Available for Competitive Nominations. Parcels that are withdrawn by the Bureau of Land Management would be identified in the Notice of Competitive Lease Sale as not available for noncompetitive leasing. Parcels that receive multiple nominations also would be identified in the sale notice in order to prevent the nominating parties from bidding against themselves on single-bid tracts at the oral auction.

Section 3120.3–7 of the proposed rulemaking provides that the national minimum acceptable bid, first year's rental and the $75 administrative fee that covers the proportionate share of the sale costs which is charged to the highest bidder would be refunded to all nominators who are unsuccessful at the oral auction.

Section 3120.4 of the proposed rulemaking would require the preparation of a Notice of Competitive Lease Sale. The purpose of the sale notice is to identify parcels by number, describe the lands by legal subdivision or by metes and bounds, as appropriate, indicate the parcel acreage, state the total minimum acceptable bid and amount of first-year rental due, set forth lease stipulations that would be included in the lease, and state the time, date and location of the oral auction. A Notice of Competitive Lease Sale would be posted for either type of sale process. Either the Notice of Competitive Lease Sale or the List of Lands Available for Competitive Nominations would be posted at least 45 days prior to the oral auction to meet the statutory time frame. This section also would require for the Bureau of Land Management to furnish a copy of the list or notice to each surface managing agency having jurisdiction over any lands being offered.

Section 3120.5 of the proposed rulemaking would address the logistics of the oral auction, the payments required, and the awarding of a competitive lease. Any national minimum acceptable bid that is received through the nomination process would be announced prior to oral auction of each parcel. If two or more nominations have been received, and no higher bids are made at the oral sale, the tie nominations would be rejected and the

monies submitted would be returned. The parcels would then be offered again competitively at a subsequent auction. Payments required under § 3120.5–2 of this title would not be permitted in currency in order to eliminate handling and security problems. On the day the parcel is sold, the highest bidder would be required to pay 20 percent of the bonus bid, the first year's rental, and an administrative fee of $75 for each parcel. The balance of the bonus is due in the proper BLM office within 10 working days or all monies submitted will be forfeited. The $75 fee charged the highest bidder would help defray the costs of the sale and is based on the average unit cost to the Bureau of Land Management of preparing parcel offerings. The public is requested to comment on this provision specifically and on any possible alternative payment procedures.

Section 3120.5–3 would require the highest bidder to execute a competitive bid form, approved by the Director, to be submitted with the required payments on the day the parcel is sold. Signature on the bid form would constitute a legally binding offer to lease. This would allow issuance of a lease with no further action required on the part of a bidder. Use of this bid form would also provide the opportunity for a potential lessee to use an agent to tender a bid at the oral auction and execute required forms or to execute the forms themselves prior to the auction.

Section 3120.6 of the proposed rulemaking would provide that if no bids are received on a parcel, the lands would be available for noncompetitive leasing for a 2-year period beginning on the date specified in the Notice of Competitive Lease Sale.

Section 3120.7 of the proposed rulemaking would provide that future interest leasing also would be subject to the competitive process under Subpart 3120. This section of the proposed rulemaking also emphasizes the need for a present interest leaseholder to exceed the highest acceptable bid at the oral auction; otherwise the future interest lease will be issued to the highest acceptable bidder.

A new § 3120.7–2 would be added specifying that rental and royalties are not payable until the oil and gas rights in the lands vest in the United States. This section also would require that a transfer of the present interest would require a transfer to be filed in accordance with Subpart 3106 of the regulations, and if the present lease interests are relinquished, cancelled, terminated or expired, such lease rights with the United States also would cease or terminate. These terms and conditions were previously specified in supplemental agreements that would be deleted by this proposed rulemaking.

Part 3130—Oil and Gas Leasing—National Petroleum Reserve—Alaska

Subpart 3134 would be revised by the proposed rulemaking in a manner similar to Subpart 3104 discussed earlier in this preamble. The proposed revisions would clarify in § 3134.1 that either personal or surety bonds may be furnished, with personal bonds allowed to be in the form of certified check, cashier's check, certificate of deposit, negotiable Treasury securities, or an irrevocable letter of credit.

Part 3160—Onshore Oil and Gas Operations

The proposed rulemaking would amend § 3162.3–1 (d) and (e) to clarify that the drilling plan and surface use plan of operations are distinct and separate parts of an Application for Permit to Drill. This amendment implements 5102(d) of the Act which specifies that the Secretary of the Interior, or for National Forest System lands the Secretary of Agriculture, must approve the surface use plan of operations in Applications for Permit To Drill. The surface use plan of operations would be a distinct part of the Application for Permit To Drill so that it can be separated and forwarded to the U.S. Forest Service for approval on National Forest System Lands.

Section 3162.3–1(d)(4) of the existing regulations would be revised to remove language indicating that an Application for Permit To Drill could be approved in less than 30 days. This is no longer applicable since section 5102(d) of the Act requires a 30-day public posting of a map or narrative description of the affected lands prior to approval of an Application for Permit To Drill.

Section 3162.3–1(f) of the current regulations would be redesignated as section (h). New sections (f) and (g) would clarify the information required to be included in the surface use plan of operations and to require public posting of a map or narrative description of the affected lands prior to approval of the Application for Permit To Drill. Any substantial modifications to lease terms also would have to be posted for at least 30 days prior to approval of the Application for Permit To Drill. The 30-day posting is for public information and to invite comment on the specific proposal. Any appeal should relate to the approval or denial of the proposal and not to the posting process.

Section 3164.3(b) would be amended by the proposed rulemaking to indicate that the surface use plan of operations portion of an Application for Permit To Drill on National Forest System lands must be approved by the Secretary of Agriculture. However, the authorized officer of the Bureau of Land Management is responsible for the approval and supervision of drilling, development, and production activities on the leasehold.

Part 3180—Onshore Oil and Gas Unit Agreements—Unproven Areas

The proposed rulemaking would revise Subpart 3184 to clarify that bonds are to be furnished in the manner provided in section 3104, as discussed earlier in this preamble.

Part 3200—Geothermal Resources Leasing: General

The proposed rulemaking would revise Subpart 3206 in a manner similar to the revisions proposed in § 3104.1, discussed earlier in this preamble. The proposed changes would clarify the types of bonds acceptable to the Bureau of Land Management and would provide consistency between the bonding provisions for the geothermal resources leasing program and the oil and gas leasing program. The Bureau bonding task force, discussed earlier in conjunction with the revisions proposed in § 3104.1, also reviewed the bonding aspects and procedures related to geothermal leasing, and the Director of the Bureau recommended that the proposed changes be consistent for both leasing programs.

The principal authors of this proposed rulemaking are Rob Cervantes, Sie Ling Chiang, Karl Duscher, Lois Mason, Judy Reed, and Jeffrey Zabler, of the Bureau of Land Management Washington Office assisted by numerous Bureau of Land Management Field Office representatives and the staff of the Division of Legislation and Regulatory Management.

Section 5107 of the Act requires the Secretary of the Interior to issue final regulations to implement the Act and provides that the promulgation of such regulations shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and thus that no statement pursuant that section is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a significant economic effect on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0034, 1004–0067, 1004–0074, 1004–0034, 1004–0132, 1004–0136, 1004–0137, 1004–0138, and 1004–0145.

Amended information collection requirements associated with the nomination form (1004–0065) have been submitted to the Offce of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects

43 CFR Part 3000

Land Management Bureau, Public lands-mineral resources.

43 CFR Part 3100

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3130

Alaska, Government contracts, Land Management Bureau, Mineal royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Surety bonds.

43 CFR Part 3200

Geothermal energy, Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3280

Geothermal energy, Government contracts, Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, Pub. L. 100–203, and other authorities cited below, it is proposed to amend Part 3000, Group 3000, and Parts 3100, 3110, 3120, 3130, 3160, and 3180, Group 3100, and Parts 3200 and 3280, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3000—[AMENDED]

1. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

2. Section 3000.0–5 is amended by revising paragraph (f) to read:

§ 3000.0–5 Definitions.

* * * * *

(f) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Groups 3000 and 3100, except that:

(1) The proper office to file nominations under Subpart 3120 of this title may be another Bureau office designated by the Director in the List of Lands Available for Competitive Nominations or other notice; and

(2) All oil and gas lease offers, and assignments or transfers for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska.

(See § 1821.2–1 of this title for office location and area of jurisdiction of Bureau of Land Management offices).

3. Section 3000.9 is added to read as follows:

§ 3000.9 Enforcement.

Provisions of section 41 of the act shall be enforced by the United States Department of Justice.

PART 3100—[AMENDED]

4. The authority citation for Part 3100 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et. seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

Subpart 3100—Oil and Gas Leasing; General

5. Section 3100.0–3 is amended by removing the word "and" at the end of paragraphs (a)(2)(iii) and (v), by adding paragraphs (vii), (viii), (ix), (x), and (xi) to paragraph (a)(2), and by removing the word "and" at the end of paragraph (b)(2)(vi), and adding paragraphs (viii), (ix), (x), (xi), and (xii) to paragraph (b)(2), to read as follows:

§ 3100.0–3 Authority.

(a) * * *

(2) * * *

(vii) Lands recommended for wilderness allocation by the surface managing agency;

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) * * *

(2) * * *

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

* * * * *

6. Section 3100.0–3(c) is amended by removing the citation "(Pub. L. 96–514)" and replacing it with the citation "(42 U.S.C. 6508)".

7. Section 3100.0–5 is amended by revising paragraphs (k) and (l) to read:

§ 3100.0–5 Definitions.

* * * * *

(k) "Offer for noncompetitive lease" means an offer filed for lands available for a 2-year period for noncompetitive leasing after the lands have been competitively offered by the Bureau under Part 3120 and received no bids.

(l) "Bid" means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

§§ 3100.3, 3100.3–1, and 3100.3–2 [Removed]

8. Sections 3100.3, 3100.3–1, and 3100.3–2 are removed in their entirety.

§§ 3100.4, 3100.4–1, 3100.4–2, 3100.4–3 [Redesignated as §§ 3100.3, 3110.3–1 3100.3–2, 3100.3–3]

9. Sections 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 are redesignated as 3100.3, 3100.3–1, 3100.3–2, and 3100.3–3, respectively, and the cross reference to "§ 3100.4–1(b)" in newly redesignated § 3100.3–3 is amended to read "§ 3100.3–1(b)".

Subpart 3101—Issuance of Leases

10. A new § 3101.1–4 is added to read:

§ 3101.1–4 Modification of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer had determined, prior to lease issuance, that a stipulation involved an issue of major concern to the public, waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before waiver.

11. Section 3101.7–1 is revised to read:

§ 3101.7–1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

§§ 3101.7–2 and 3101.7–3 [Removed].

12. Sections 3101.7–2 and 3101.7–3 are removed in their entirety.

§ 3101.7–4 [Redesignated as § 3101.7–2 and Amended].

13. Section 3101.7–4 is redesignated as 3101.7–2 and paragraph (b) is revised to read:

§ 3101.7–2 Action by the Bureau of Land Management.

(a) * * *

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

§ 3101.7–5 [Redesignated as § 3101.7–3 and Revised].

14. Section 3101.7–5 is redesignated as 3101.7–3 and is revised to read:

§3101.7–3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under Part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that stipulations be included in a lease or has objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

§ 3101.8 [Amended].

15. Section 3101.8 is amended by changing the term "90 days" in the first sentence to read "30 days".

Subpart 3102—Qualifications of Lessees

16. Section 3102.1 is amended by making the existing paragraph (a), and by adding the new paragraph (b) to read:

§ 3102.1 [Amended].

* * * * *

(b) No lease shall be issued to a person or entity that is not in compliance with § 3102.5–1 of this title.

17. Section 3102.5–1, which was proposed at 52 FR 22605, June 12, 1987, is revised to read:

§ 3102.5–1 Compliance.

In order to actually or potentially own, hold, or control an interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0–5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a

corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term "entity" is defined at § 3400.0-5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the act; and

(f) In compliance with section 17(g) of the act, in which case the signature on an offer, lease, assignment, or transfer constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding consideration by the authorized officer of any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings.

18. Section 3102.6 which was proposed at 52 FR 22605, June 12, 1987 is revised to read:

§ 3102.6 Agent.

Any party filing or signing documents on behalf of another constitutes an agent, and may be requested at any time by the authorized officer to provide a power of attorney or agency agreement that:

(a) Expressly provides authority for the agent to execute and file lease documents on behalf of the principal;

(b) Expressly provides authority to the agent to execute all statements of interests and holdings and other statements required by the act or regulations on behalf of the principal; and

(c) Binds the principal to representation on his/her behalf by the agent and waives any and all defenses to contest, disaffirm, or negate the actions taken by the agent under the power of attorney/agency agreement.

Subpart 3103—Fees, Rentals, and Royalty

19. Section 3103.1-1 is revised to read:

§ 3103.1-1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified checks, money order, and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

20. Section 3103.2-1 is amended by revising the first sentence of paragraph (a) and all of paragraph (b) to read:

§ 3103.2-1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. * * *

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 10 calendar days of notice by the authorized officer of the error.

* * * * *

21. Section 3103.2-2 is amended by removing paragraphs (a) through (k) and inserting in their place paragraph (a) through (f) to read:

§ 3103.2-2 [Amended].

* * * * *

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be $1.50 per acre or fraction thereof for the first 5 years of the lease term and $2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) For any lease issued on or before December 22, 1987, or issued pursuant to an offer to lease filed prior to that date, the annual rental shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former Subpart 3112 of this title on or after February 19, 1982, shall be subject to annual rental in the sixth and subsequent lease years of $2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of $2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2-3 of this title, and on noncompetitive leases that were originally issued under § 3108.2-4 of this title, the annual rental shall be $5 per acre or fraction thereof upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be $10 per acre or fraction thereof upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2-3 of this title, the annual rental on that lease shall increase by an additional $5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional $10 per acre or fraction thereof for leases that were originally issued competitively.

22. Section 3103.3-1 is revised to read:

§ 3103.3-1 Royalty on production.

(a) Royalty on production shall be payable only on the mineral interest owned by the United States. Royalty shall be paid in amount or value of the production removed or sold as follows:

(1) 12½ percent on all leases, including exchange and renewal leases and leases issued in lieu of unpatented oil placer mining claims under § 3108.2-4 of this title, issued after December 22, 1987, except:

(i) leases issued after December 22, 1987, resulting from offers to lease or bids filed on or before December 22, 1987, which are subject to the rates in effect on December 22, 1987; and

(ii) leases issued on or before December 22, 1987, which are subject to the rates contained in the lease or in regulations at the time of issuance;

(2) 16⅔ percent on noncompetitive leases reinstated under § 3108.2–3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(3) not less than 4 percentage points above the rate used for royalty determination contained in the lease that is reinstated or in force at the time of issuance of the lease that is reinstated for competitive leases, plus an additional 2 percentage-point increase added for each succeeding reinstatement.

(b) Leases that quality under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

(c) The average production per well per day for oil and gas shall be determined pursuant to 43 CFR 3162.7–4.

(d) Payment of a royalty on the helium component of gas shall not convey the right to extract the helium. Applications for the right to extract helium shall be made under Part 16 of this title.

§ 3103.3–2 [Amended]

23. Section 3103.3–2(a) is revised to read:

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

* * * * *

Subpart 3104—Bonds

24. Section 3104.1 is revised to read:

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease.

25. Section 3104.2 is revised to read:

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or in the name of the lessee or sublessee, provided that the necessary documentation to include the operator within the coverage of the bond is provided.

26. Section 3104.3 is revised to read:

§ 3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $150,000 covering all leases and operations nationwide.

27. Section 3104.4 is revised to read:

§ 3104.4 Unit operator's bond.

The approved unit operator may furnish and maintain a unit operator bond, in the manner set forth in § 3104.1 of this title, conditioned upon faithful performance of the duties and obligations of the agreement and the terms and conditions of every lease subject thereto in lieu of a separate lease bond for each lease committed to the unit agreement. (See § 3186.2 of this title for an example of a unit bond form.) A unit operator's bond shall be furnished upon request and in the amount determined appropriate by the authorized officer.

28. Section 3104.5 is revised to read:

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely and in a timely manner, the authorized officer shall require, prior to approval of the outstanding Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the

operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there may be uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

29. Section 3106.1 is amended by removing the first 2 sentences of paragraph (a) and adding in their place the following, and revising paragraph (b) to read:

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, under any lease shall be disapproved. A transfer of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the transfer constitutes the entire lease or sublease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer.
* * *

(b) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

Subpart 3107—Continuation, Extension or Renewal

30. Section 3107.2–2 is amended by adding at the end thereof a sentence to read:

§ 3107.2–2 Cessation of production.

* * * The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

31. Section 3107.2–3 is amended by revising the first sentence to read:

§ 3107.2–3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. * * *

32. Section 3107.7 is amended by revising the last sentence to read:

§ 3107.7 Exchange leases—20-year term.

* * * An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the provisions of § 3102.5 of this title and the terms of the lease and applicable regulations, and shall be accompanied by a nonrefundable application fee of $75.

33. Section 3107.8–1(a) is revised to read:

§ 3107.8–1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee and operating rights owners (subleasees), and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations, including those pertaining to reclamation requirements.

* * * * *

34. Section 3107.8–3(a) is amended by revising the last sentence to read:

§ 3107.8–3 Approval.

(a) * * * Upon execution of the lease forms, including certification of compliance with § 3102.5 of this title, and an appropriate satisfactory lease bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

* * * * *

Subpart 3108—Relinquishments, Termination, Cancellation

35. Section 3108.1 is amended by revising the last sentence to read:

§ 3108.1 Relinquishment.

* * * A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties, to place all wells on the lands to be relinquished in condition for suspension or abandonment, and to complete reclamation of the leased lands or surface waters adversely affected by lease operations in a timely manner after abandonment or cessation of oil and gas operations on the lease, in accordance with the regulations and the terms of the lease.

§ 3108.2–4 [Amended]

36. Section 3108.2–4(e)(2) is amended by removing "§ 3102.3–1" and replacing it with "§ 3103.3–1."

37. Section 3108.3 (a) and (c) are revised to read as follows:

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31 of the act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) * * *

(c) Leases for lands containing a well capable of production of oil or gas in paying quantities, or leases for lands committed to an approved cooperative or unit plan or communitization agreement that contain a well capable of production of unitized substances in paying quantities may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

Subpart 3109—Leasing Under Special Acts

§ 3109.3 [Removed]

§ 3109.4 [Redesignated as § 3109.3]

38. Section 3109.3 is removed, and § 3109.4 is redesignated as § 3109.3.

39. Part 3110 is revised to read:

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

Sec.

Sec.
3110.8–4 Accreted lands.
3110.8–5 Conflicting descriptions.
3110.9 Future interest offer.
3110.9–1 Availability.
3110.9–2 Form of offer.
3110.9–3 Fractional present and future interest.
3110.9–4 Future interest terms and conditions.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

Subpart 3110—Noncompetitive Leases

§ 3110.1 Lands available for noncompetitive leasing.

Only lands that have been offered for competitive leasing under Subpart 3120 of this title for which no bids were received shall be available under this subpart for an offer for noncompetitive lease. Such lands shall be available for a period of 2 years after the competitive process is concluded, as authorized by the Director and stated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale.

§ 3110.2 Priority.

(a) Offers filed prior to the effective date of these regulations, for lands then available for noncompetitive leasing, shall receive priority as of the time of filing. Conflicting offers shall be subject to the provisions of § 1821.2–3(a) of this title.

(b) Noncompetitive offers filed on or after the effective date of these regulations, shall receive priority as of the date of filing. Conflicting offers shall be subject to the provisions of § 1821.2–3(a) of this title, except that the time referred to therein shall be 1 day. Offers to lease received in the mail or over-the-counter during official business hours on that day shall be considered simultaneously filed. An offer may be available for public inspection the first working day following filing.

(c) Noncompetitive filings made pursuant to an opening order or other notice shall be subject to all provisions and procedures stated in such order or notice.

(d) Where there are multiple filings for the same parcel made under former Subpart 3112 of this title, only a single priority filing shall be drawn. All other filings shall be rejected. If the drawn filing does not mature into a lease, the land shall be reoffered under Subpart 3120 of this title.

§ 3110.3 Lease terms.

§ 3110.3–1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years.

§ 3110.3–2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3110.9 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3110.9 of this title shall be effective as of the date the mineral interests vest in the United States.

§ 3110.3–3 Lease offer size.

(a) Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease. This paragraph shall not apply to offers made under § 3108.2–4 of this title or where the offer is filed on an entire parcel as it was offered by the Bureau in a competitive sale. Such public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer incudes all available lands within the subject section and there are no contiguous lands available for lease. Where an offer exceeds the minimum 640-acre provision of this paragraph, the offer may include less than all available lands in any given section. Cornering lands are not considered contiguous lands.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition or tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area, and such acquisition or tract number is provided in accordance with § 3110.8–2(d) of this title in lieu of any other description.

(c) If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority shall be lost.

§ 3110.4 Withdrawal of offer.

An offer for noncompetitive lease under this subpart may be withdrawn in whole or in part by the offeror. Such withdrawal may be made only if the withdrawal is received by the proper BLM office at least 60 days after the date of filing and before the lease, an amendment of the lease, or a separate lease, whichever covers the lands described in the withdrawal, has been signed on behalf of the United States. If a public domain offer is partially withdrawn, the lands retained in the offer shall comply with § 3110.3–3(a) of this title.

§ 3110.5 Action on offer.

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected. Unless such lease form has been declared obsolete by the Director prior to the filing, filing an offer on a lease form not currently in use shall be

allowed, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use.

§ 3110.6 Amendment to lease.

After the competitive process has concluded in accordance with Subpart 3120 of this title, if any of the lands described in a lease offer for lands available during the 2-year period are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall be made by submission of a signed statement of the offeror requesting a separate lease, and a new offer on the required form executed pursuant to this part describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new application fee is required with the news offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.3–2 of this title.

§ 3110.7 Requirements for offer.

(a) An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2–4 of this title, the current lease form shall be used. Copies shall be exact reproductions on 1 page of both sides of the official approved form, without additions, omissions, or other changes, or advertising. The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror's duly authorized agent, and shall be accompanied by a nonrefundable application fee of $75 and the first year's rental. The original and 2 copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. A noncompetitive offer to lease a future interest applied for under § 3110.9 of this title shall be accompanied by a nonrefundable application fee of $75. Where remittances for offers are returned for insufficient funds, the offer shall not obtain priority of filing until the date the remittance is properly made.

(b) Where a correction to an offer is made, whether at the option of the offeror or at the request of the authorized officer, it shall gain priority as of the date the filing is correct and complete. The priority that existed before the date the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflict in such offers, except as provided under §§ 3103.2–1(a) and 3103.3–3(c) of this title.

(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b) of this section.

(d) Compliance with Subpart 3102 shall be required.

(e) All offers for leases should name the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part.

§ 3110.8 Description of lands in offer.

§ 3110.8–1 Parcel number description.

The only acceptable description of lands in a noncompetitive offer shall be the parcel number assigned in the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale until the end of the month of the competitive process. Each offer shall consist of a single parcel. After that date, the description of lands shall be made in accordance with the remainder of this section.

§ 3110.8–2 Public domain.

(a) If the lands have been surveyed under the public land rectangular survey system, each offer shall describe the lands by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands have not been surveyed under the public land rectangular survey system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an official corner of the public land surveys.

(c) When protracted surveys have been approved and the effective date thereof published in the Federal Register, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(d)(1) Where offers are pending for unsurveyed lands that are subsequently surveyed or protracted before the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

(e) The requirements of this section shall apply to applications for conversion of abandoned unpatented oil placer mining claims made under 3108.2–3 of this title, except that deficiencies shall be curable.

§ 3110.8–3 Acquired lands.

(a) If the lands applied for lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described either by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner, or a copy of the deed or other conveyance document by which the United States acquired title to the lands may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description on the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(c) If the lands applied for lie outside an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described either as in the deed or other conveyance document by which the United States acquired title to the lands, or a copy of that document may be attached to the offer and referred to therein in lieu of redescribing the lands on the offeror form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description in the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, such number may be provided in lieu of other descriptions required by this section.

(e) The requirements in paragraph (d) of this section to provide a land description may be waived by the authorized officer on a determination that providing the acquisition or tract number constitutes an adequate description.

(f) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offeror, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part.

§ 3110.8-4 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

§ 3110.8-5 Conflicting descriptions.

If there is any variations in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

§ 3110.9 Future interest offers.

§ 3110.9-1 Availability.

A noncompetitive future interest lease shall be issued only to an offeror who owns all or substantially all of the present operating rights in the lands, either as an operator holding such rights or as mineral fee owner, or as lessee or another party in interest.

§ 3110.9-2 Form of offer.

(a) An offer to lease a future interest shall be filed in accordance with this subpart, and shall be accompanied by a certified abstract of title or certificate of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease, sublease or contract, the offer shall also be accompanied by a copy of such lease, sublease or contract.

(b) If the offer is submitted by any other party in interest, the offeror shall set forth on the offer form or on a separate accompanying sheet, the names of all other parties who, as mineral fee owner, lessee, or operator holding such rights, own or hold any interest in the present operating rights or lease and/or interest in the offer. A statement signed by both the offeror and the other parties in interest, setting forth both the nature of any oral understanding between them, and a copy of any written agreement between them shall be filed with the proper BLM office prior to the issuance of a future interest lease. Such statement and/or agreement shall include or be accompanied by a statement signed by all parties setting forth the nature and extent of their respective interests.

(c) A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3110.9-3 Fractional present and future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

§ 3110.9-4 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, prior to the vesting of the oil and gas rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any over-the-counter lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

Subparts 3111 and 3112 [Removed]

40. Subparts 3111 and 3112 are removed in their entirety.

41. Part 3120 is revised in its entirety to read:

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.

Sec.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty.Gen. 41).

Subpart 3120—Competitive Leases

§ 3120.1 General.

§ 3120.1–1 Lands available for competitive leasing.

All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to:

(a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.

(b) Lands for which authority to lease has been delegated from the General Services Administration.

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding leases(s) so sold shall be subject to the terms and conditions of the existing lease(s).

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

§ 3120.1–2 Requirements.

(a) Lease sales shall be held at least quarterly for each State where eligible lands are available.

(b) Lease sales shall be conducted by a competitive oral bidding process.

(c) The national minimum acceptable bid shall be $2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1–3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

§ 3120.2 Lease terms.

§ 3120.2–1 Duration of lease.

Competitive leases shall have a primary term of 5 years.

§ 3120.2–2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.7 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2–3 Lease size.

Lands shall be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which shall be as nearly compact in form as possible.

§ 3120.3 Nomination process.

§ 3120.3–1 General.

The Director may elect to accept nominations and may elect to require submission of the national minimum acceptable bid, as set forth in this section, as part of the competitive process required by the act. A List of Lands Available for Competitive Nominations may be posted in accordance with § 3120.4 of this title, and nominations in response to this list shall be made in accordance with instructions continued therein and on a form approved by the Director. Those parcels receiving nominations shall be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the Bureau.

§ 3120.3–2 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form aproved by the Director shall:

(a) include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality shall appear as the nominator. All communications relating to leasing shall be sent to that name and address, which shall constitute the nominator's name and address of record;

(b) be completed, signed in ink and filed in accordance with the instructions printed on the form and the regulations in this subpart. Execution of the nomination form shall constitute a legally binding offer to lease by the nominator, including all terms and conditions;

(c) be filed within the filing period and in the BLM office specified in the List of Lands Available for Competitive Nominations. A nomination shall be unacceptable if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) be accompanied by a remittance sufficient to cover the national minimum acceptable bid, the first year's rental per acre or fraction thereof, and the administrative fee as set forth in § 3120.5–2(b) of this title for each parcel nominated on the form.

§ 3120.3–3 Minimum bid and rental remittance.

Nominations filed in response to a List of Lands Available for Competitive Nominations shall be accompanied by a single remittance. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels nominated on each form shall cause the entire filing to be deemed unacceptable.

§ 3120.3–4 Withdrawal of a nomination.

A nomination shall not be withdrawn, except by the Bureau for a cause.

§ 3120.3–5 Parcels receiving nominations.

Parcels which receive nominations shall be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3–6 Parcels not receiving nominations.

Lands included in the List of Lands Available for Competitive Nominations which are not included in the Notice of Competitive Lease Sale because they were not nominated, unless they were withdrawn by the Bureau, shall be available for a 2-year period, for noncompetitive leasing as specified in the List.

§ 3120.3–7 Refund.

The minimum bid, first year's rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral auction.

§ 3120.4 Notice of competitive lease sale.

§ 3120.4–1 General.

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

§ 3120.4–2 Posting of notice.

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be posted in the proper BIM office having jurisdiction over the lands as specified in § 1821.2–1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

§ 3120.5 Competitive sale.

§ 3120.5–1 Oral auction.

(a) Parcels shall be offered by oral bidding. A nomination accompanied by the national minimum acceptable bid shall be announced at the auction for the parcel.

(b) A winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final.

(c) Two or more bids equal to the national minimum acceptable bid level, with no higher oral bid being made, shall be rejected with all monies returned. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart.

§ 3120.5–2 Payments required.

(a) Payments shall be made in accordance with § 3103.1–1 of this title.

(b) Each winning bidder shall submit, by the close of official business hours on the day of the sale for the parcel:

(1) 20 percent of the total bonus bid or balance thereof;

(2) The total amount of the first year's rental; and

(3) An administrative fee of $75 per parcel.

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction.

§ 3120.5–3 Award of lease.

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with Subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5–2(b) of this title. Failure to comply with § 3120.5–2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5–2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

§ 3120.6 Parcels not receiving bids.

Lands offered at the competitive sale which receive no bids shall be available for noncompetitive leasing for a 2-year period as specified in the Notice of Competitive Lease Sale.

§ 3120.7 Future interest.

§ 3120.7–1 Nomination to make lands available for competitive lease.

(a) A nomination for a future interest lease shall be filed in accordance with this subpart.

(b) Holder(s) of the present operating rights in the lands being offered under this subpart shall have the opportunity to exceed the highest acceptable bid at the competitive lease sale. Failure to do so shall be considered a waiver of all claims to the competitive future interest lease, and the lease shall be awarded to the highest responsible qualified bidder in accordance with this subpart.

§ 3120.7–2 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, prior to the vesting of the oil and gas rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any competitive lease issued under this subpart, as provided in subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

§ 3120.7–3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

PART 3130—OIL AND GAS LEASING—NATIONAL PETROLEUM RESERVE—ALASKA

42. The authority citation for Part 3130 is revised to read:

Authority: The Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)

§ 3134.1 [Amended]

43. Section 3134.1(a) is amended by inserting the words "in accordance with the provisions of § 3104.1 of this title" after the word "bond" in the first sentence, and by removing the word

"special" in the two places it appears in this paragraph.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

44. The authority citation for Part 3160 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), Act of March 3, 1909, as amended (25 U.S.C. 369), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*); the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

Subpart 3162—Requirements for Lessees and Operators

45. Section 3162.3–1 is amended by revising paragraphs (d) and (e), by redesignating paragraphs (f) and (g) (paragraph (g) proposed at 52 FR 22619, June 12, 1987) as (h) and (i), respectively, by adding new paragraphs (f) and (g), and by revising newly redesignated paragraphs (h) and (i), all to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is anticipated. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160–3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices,

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices,

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location, pertinent geologic data, expected problems and hazards, and proposed mitigation. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for restoration of the surface, and other pertinent data as the authorized officer may require.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, and a map showing location of the site; and any substantial modifications to the lease terms. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at lest 30 days. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other appropriate interested parties and shall take one of the following actions upon conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or stipulations;

(2) Return the application and advise the applicant of the reasons for disapproval; or

(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3–2 [Amended]

46. Section 3162.3–2(a) is amended by adding at the end of the first sentence thereof the words "to injection."

Subpart 3163—Noncompliance and Assessments

§ 3163.1 [Amended]

47. Section 3163.1(a)(5) is amended by removing the words "and forfeiture declared under the surety bond" from the second sentence.

Subpart 3164—Special Provisions

§ 3164.3 [Amended]

48. Section 3164.3(b) is amended by removing the initial word "The" and replacing it with the words "Except for the approval of the surface use plan of operations for Applications for Permit to Drill on National Forest System lands, the * * *".

PART 3180—[AMENDED]

Subpart 3184—Bonds

49. Section 3184.1 is revised to read:

§ 3184.1 Bonds.

In lieu of separate bonds required for each Federal lease committed to a unit agreement, the unit operator may furnish and maintain a surety bond or personal bond in accordance with the provisions of § 3104.1 of this title, conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the Federal leases subject thereto. Liability under the bond shall be for such amount as the authorized officer shall determine to be adequate to protect the interests of the United States, and additional bonding may be required whenever deemed necessary. The bond shall be filed with the authorized officer. A form of corporate surety bond is set forth in § 3186.2 of

this title. In case of change of unit operator, a new bond shall be filed or consent of surety to such change of unit operator shall be furnished.

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

50. The authority citation for Part 3200 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

Subpart 3206—Lease Bonds

51. Section 3206.1–1 is revised to read:

§ 3206.1–1 Bond obligations.

(a) A surety or personal bond conditioned upon compliance with the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to the commencement of drilling operations.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly state on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease.

§§ 3206.4, 3206.4–1, 3206.4–2, and 3206.4–3 [Removed]

52. Sections 3206.4, 3206.4–1, 3206.4–2, and 3206.4–3 are removed in their entirety.

§ 3206.5 [Redesignated as § 3206.4 and Revised]

53. Section 3206.5 is redesignated as § 3206.4 and revised to read:

§ 3206.4 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

§ 3206.6 [Redesignated as § 3206.5 and Revised]

54. Section 3026.6 is redesignated § 3206.5 and revised to read:

§ 3206.5 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases

§§ 3206.7, 3206.7–1, 3206.7–2, 3206.8, and 3206.9 [Redesignated as §§ 3206.6, 3206.6–1, 3206.6–2, 3206.7, and 3206.8]

55. Sections 3206.7, 3206.7–1, 3206.7–2, 3206.8, and 3206.9 (§ 3206.9 proposed at 52 FR 22623, June 12, 1987) are redesignated as §§ 3206.6, 3206.6–1, 3206.6–2, 3206.7, and 3206.8, respectively.

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS—UNPROVEN AREAS

56. The authority citation for Part 3280 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

Subpart 3284—Bonds

57. Section 3284.1 is amended by removing the second sentence thereof in its entirety, and by revising the first sentence to read as follows:

§ 3284.1 Bonds.

In lieu of separate bonds required for each Federal lease committed to a unit agreement, the unit operator may furnish and maintain a surety bond or personal bond in accordance with the provisions of § 3206.1–1 of this title, conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the leases subject thereto.

* * *

March 2, 1988.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 88–6143 Filed 3–18–88; 8:45 am]

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federal register

Monday
March 21, 1988

Part V

Department of Education

Applications for Awards Under the Workplace Literacy Partnerships Grants Program for Fiscal Year 1988; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.198]

Invitation of Applications for Awards Under the Workplace Literacy Partnerships Grants Program for Fiscal year 1988

Purpose of Program: To provide assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations, and education organizations.

Deadline for Transmittal of Applications: June 6, 1988.

Available Funds: $9,574,000.

Estimated Range of Awards: $50,000–$500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 32.

Project Period: Up to 15 months.

Important Notes to Applicants: Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates.

This notice is a complete application package containing all the information, application forms, and instructions needed to apply for a grant under this program. No other application package is necessary.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

Selection Criteria: (a)(1) The Secretary uses the following criteria to evaluate applications for grants under the Workplace Literacy Partnerships Grants Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (15 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (12 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590, Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Description of Program: The Workplace Literacy Partnerships Grants Program for fiscal year 1988 is authorized under Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988). Section 137(b) of Pub. L. 100–202 states that the Workplace Literacy Partnerships Grant Program is to be carried out in accordance with the provisions of section 317 of the Adult Education Act, as contained in the Senate amendment to H.R. 5. The following conditions apply:

(a) Assistance is provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or community-based organization).

(b)(1) "Community-based organizations" means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001 Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(13) of the Rehabilitation Act of 1973, 29 U.S.C. 706(13)), agencies serving youth, agencies serving the handicapped, including disabled veterans, agencies serving displaced

homemakers, union-related organizations, and employer-related nonprofit organizations, and organizations serving nonreservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups (29 U.S.C. 1503(5)); and

(2) "Private industry council" means the private industry council established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

(c) An application must be submitted jointly by an entity listed in paragraph (a)(1) of this section and an entity listed in paragraph (a)(2) of this section.

(d) An application must contain a description of the respective roles of each member of the partnership, evidence of the applicant's experience in providing literacy services to working adults, assurances that the applicant will use the funds to supplement and not supplant funds otherwise available for the purposes of this program, and a plan for carrying out the proposed project.

(e) A project must be designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace by—

(1) Providing adult literacy and other basic skills services and activities;

(2) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(3) Meeting the literacy needs of adults with limited English proficiency;

(4) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(5) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(6) Providing for adult workers education counseling, transportation, and child care services during nonworking hours while the workers participate in the project.

(f) A project may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(g) An award under this program may be used to pay—

(1) 70 percent of the costs of a project during the operational period referenced in paragraph (f)(2) of this section;

(2) 100 percent of the administrative costs incurred by State educational agencies and local educational agencies in establishing projects during the start-up period referenced in paragraph (f)(1) of this section; and

(3) 70 percent of the administrative costs incurred by other entities in establishing projects during the start-up period referenced in paragraph (f)(1) of this section.

(h)(1) The Secretary anticipates that a project's start-up period will last no longer than 90 days; and

(2) Applicants are encouraged to minimize the start-up period, if any, proposed for their projects.

(i) Costs incurred during both the start-up and operational periods of a project must be necessary and reasonable.

Priority: (a) In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive from the Secretary competitive or absolute preference over other applications.

(b) The Secretary invites applications from workplace literacy partnerships that demonstrate a strong relationship between skills taught and the literacy requirements of actual jobs, especially partnerships to address the increased skill requirements of the changing workplace. Projects should be targeted on adults with inadequate basic skills for whom the training described will mean new employment, continued employment, career advancement, or increased productivity. Projects should include support services, based on cooperative relationships within the partnerships, necessary to reduce barriers to participation by these adults. These support services could include education counseling, transportation, and child care during nonworking hours while workers are participating in a project.

The application must indicate how, as a part of project evaluation, the grantee will provide for monitoring progress of training activities during the project period.

Other Information: The Secretary wishes to highlight the fact that certain provisions in 34 CFR Part 75—34 CFR 75.128 and 75.129—are of particular importance to partnerships applying for awards under this program. In general the provisions state that if a group of eligible parties applies for a grant, the members of the group shall either designate one member of the group to apply for the grant or establish a separate, eligible legal entity to apply for the grant. The members of the group shall enter into an agreement that details the activities that each member of the group plans to perform and binds each member of the group to every statement and assurance made by the applicant in the application.

The applicant shall submit the agreement with its application.

If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for the use of all grant funds and ensuring that the project is carried out by the group in accordance with Federal requirements. Each member of the group is legally responsible to carry out the activities it agrees to perform and use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

Instructions for Transmittal of Applications: (a) The applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Washington, DC 20202, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The applicant *must* indicate on the envelope CFDA number 84.198.

(3) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed post card containing the CFDA number and title of this program.

For Further Information Contact: Ms. Nancy E. Smith, National Projects Branch, Division of Innovation and Development, Room 519, Reporters Building or Ms. Sarah Newcomb, Program Services Branch, Division of Adult Education, Room 522, Reporters

Building, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5516. Telephone (202) 732–2359 or (202) 732–2390, respectively.

Application Instructions and Forms: This application is divided into three parts. The submitted application should be organized in the same manner. The parts are as follows:

PART I: Federal Assistance Fact Sheet (Form SF 424 and instructions).

PART II: Budget Data (form and instructions).

PART III: Program Narrative.

No grants may be awarded unless a complete application form has been received.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER (NOTE: TO BE ASSIGNED BY STATE)
- a. NUMBER
- b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code
- h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER 8 4 . 1 9 8
- MULTIPLE ☐
- b. TITLE Workplace Literacy

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) A ☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter A

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

19. FEDERAL AGENCY TO RECEIVE REQUEST U.S. Department of Education
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Application Control Center
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C

Instructions for Part I—Federal Assistance Face Sheet (SF 424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular No. A–102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience.

Below is a list of instructions to assist you in completing the applicable items on the form.

For items 2, 4, and 5, provide information for the entity that will serve as the legal applicant. (See 34 CFR 75.128 and 75.129)

Attach to the application the agreement required in 34 CFR 75.128(b) and (c).

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a–h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer identification number of applicant assigned by Internal Revenue Service (IRS). If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

7. Provide the title and a summary description of the project (use "Remarks" section on second page of form).

8. "City" includes town, township, or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

12a. Projects will be funded for only one project period of not more than 15 months. Federal funds may be used to pay no more than 70 percent of project costs, with the exception that Federal funds may be used to pay 100 percent of administrative costs incurred by State educational agencies and local educational agencies in establishing projects under this program.

23a–b. Name, title, and signature of authorized representative of legal applicant.

BILLING CODE 4000-01-M

PART II
BUDGET INFORMATION

Section A - Budget Categories for Program Year 1988-89

1.	Salary and Wages	$
2.	Fringe Benefits	
3.	Travel	
4.	Equipment	
5.	Supplies	
6.	Contractual Services	
7.	Other (itemize)	
8.	Total Direct Costs (lines 1 to 7)	
9.	Total Indirect Costs	
10.	Total Project Costs (lines 8 + 9)	

Section B - Cost Sharing

1.	Program Income	$
2.	Non-Federal Funds (State, local, etc.)	
3.	In-Kind Contributions	

Section C - Estimate of Future Federal Funding Needs

Not applicable.

Section D - Estimate of Unobligated Funds

Not applicable.

Section E - Budget Narrative

See instructions.

BILLING CODE 4000-01-C

Instructions for Part II—Budget Data

Section A—Detailed Budget

1. *Salaries and Wages:* Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 6.

2. *Fringe Benefits:* Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. *Travel:* Indicate the amount requested for travel of employees.

4. *Equipment:* Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

5. *Supplies:* Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

6. *Contractual Services:* Show the amount to be used for: (1) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above) and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. *Other:* Indicate all direct costs not clearly covered by lines 1–6 above.

8. *Total Direct Costs:* Show totals for lines 1–7.

9. *Total Indirect Costs:* Indicate the amount of indirect costs to be charged to the program or project.

10. *Total Project Costs:* Total lines 8 and 9.

Section B—Cost Sharing

1. *Project Income:* Enter the dollar amount of estimated project income that will be generated by Federal funds if authorized by the Department of Education.

2. *Non-Federal Funds:* Enter the dollar amount of funds to be provided from other sources, e.g., State, local governments, private organizations, etc.

3. *In-Kind Contributions:* Enter the dollar value of donated services and goods to be used to support the project.

Section C—Estimate of Funding Needs

Not applicable.

Section D—Estimated Unobligated Funds

Not applicable.

Section E—Budget Narrative

Fully explain and justify the following major items contained in the project budget. Include sufficient detail to facilitate determination as to allowability, relevance to the project, and cost benefits.

Personnel Salaries: Include a statement which shows the total commitment of time and the total salary to be charged to the project for each key member of the project staff.

Travel: While all travel must be fully justified, foreign travel should be separately identified and justified.

Equipment: List items of equipment in the following format: Item, Number of Units, Cost per Unit, Total Cost.

Contractual: Indicate the name of the agency or organization that is expected to receive each proposed contract/sub-grant. For consultant expenses, give the total number of consultants that will work on the project and their costs (fees, per diem, and travel).

Indirect Costs: Enter the type of indirect rate (provisional, pre-determined, final, or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Instructions for Part III—Program Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the information regarding the priority. This information is included in this application notice.

The narrative should describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice.

Please limit the Application Narrative to no more than 25 pages.

(Approved under OMB Control No. 1830–0507)

Assessment of Educational Impact: The Secretary requests comments on whether any information collection in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Program Authority: Pub. L. 100–202.

Dated: March 16, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–6142 Filed 3–18–88; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Monday
March 21, 1988

Part VI

Department of Education

34 CFR Part 779

College Library Technology and Cooperation Grants Program; Notice of Proposed Rulemaking and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 779

College Library Technology and Cooperation Grants Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations implement the College Library Technology and Cooperation Grants Program authorized under Title II-D of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. The program is designed to encourage resource-sharing projects among the libraries of institutions of higher education and to improve library and information services provided to them by public and nonprofit private organizations.

DATES: Comments must be received on or before May 5, 1988.

ADDRESS: All comments concerning these proposed regulations should be addressed to Frank Stevens or Louise Sutherland, Library Programs, Office of Educational Research and Improvement (OERI), Department of Education, 555 New Jersey Avenue, NW., Room 402, Washington, DC 20208-1430.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, (202) 357-6315.

SUPPLEMENTARY INFORMATION: The College Library Technology and Cooperation Grants Program was designed to improve the sharing of library resources throughout the higher education community by the use of technology and networking. Funds may also be granted to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

It is anticipated that approximately 82-120 grants will be made under this program to institutions of higher education and to public and nonprofit private organizations providing library and information services to institutions of higher education. The regulations do not impose burdensome requirements on any grantee participating in the program.

Paperwork Reduction Act of 1980

Sections 779.20, 779.21 and 779.30 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary specifically invites comments on proposed § 779.21(a)(1), a selection criterion relating to the sufficiency of an applicant's description of its project, and whether the point value awarded to that section should be diminished by the Secretary.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 402D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 779

Colleges and universities, Education, Grant programs—education, Libraries, Library and information science, Libraries—resource sharing, Networks, Reporting and recordkeeping requirements.

Dated: February 19, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.197, College Library Technology and Cooperation Grants)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 779 to read as follows:

Part 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 1021 and 1047, unless otherwise noted.

Subpart A—General

§ 779.1 What is the College Library Technology and Cooperation Grants Program?

The College Library Technology and Cooperation Grants Program provides grants for technological equipment and other special purposes designed to encourage the use of technology to enhance library resource sharing.

(Authority: 20 U.S.C. 1047)

§ 779.2 What types of grants does the Secretary provide?

Under the College Library Technology and Cooperation Grants Program, the Secretary shall make competitive awards in each of the following four types of grants:

(a) *Networking Equipment Grant.* These grants are designed to plan, develop, acquire, install, maintain, or replace technological equipment necessary to participate in networks for sharing of library resources.

(b) *Joint-Use Grant.* These grants are designed to establish and strengthen joint-use library facilities, resources, or equipment.

(c) *Services to Institutions Grant.* These grants are designed to establish, develop, or expand programs or projects that improve the grantee's services to institutions of higher education.

(d) *Research and Demonstration Grant.* These grants are designed to conduct research or demonstration projects to meet specialized national or regional needs in utilizing technology to enhance library and information sciences.

(Authority: 20 U.S.C. 1047)

§ 779.3 Who is eligible for an award?

The following are eligible to receive an award under this program:

(a) For Networking Equipment Grants, institutions of higher education.

(b) For Joint-Use Grants, combinations of institutions of higher education.

(c) For Services to Institutions Grants, public or nonprofit private organizations which provide library and information services to institutions of higher education on a formal cooperative basis.

(d) For Research and Demonstration Grants, institutions of higher education.

(Authority: 20 U.S.C. 1047)

§ 779.4 What activities may the Secretary fund?

(a) The Secretary awards grants under this program to enable eligible recipients to develop or implement activities or services that the Secretary determines are likely to carry out a purpose specified in § 779.2.

(b) The following types of activities or services are illustrative:

(1) Networking membership fees and expenses;

(2) Acquisition of equipment and supplies, including computer hardware and software;

(3) Telecommunications expenses;

(4) Evaluation of the project; and

(5) Dissemination of information about the project.

(Authority: 20 U.S.C. 1047)

Cross Reference. (See 34 CFR Part 74, Appendix D.)

§ 779.5 What priorities may the Secretary establish?

(a) Each year, the Secretary may select as a priority one or more of the types of grants listed in § 779.2.

(b) The Secretary announces these priorities in a notice published in the **Federal Register**.

(c) Each year, the Secretary announces the approximate amount of funding available for each type of award.

(Authority: 20 U.S.C. 1047)

Cross Reference. (See 34 CFR 75.105 Annual priorities.)

§ 779.6 What regulations apply?

The following regulations apply to the College Library Technology and Cooperation Grants Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 779.

(Authority: 20 U.S.C. 1021)

§ 779.7 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Combination of institutions of higher education" means—

(1) Two or more institutions of higher education that have entered into a formal cooperative agreement for the purpose of carrying out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

"Institution of higher education" means a public or nonprofit private institution of higher education as defined in 34 CFR 668.3.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

"Library organization or agency" means a public or nonprofit private organization or agency that provides library services or programs.

"Network" means a system of sharing library resources that is developed, maintained, or operated by a library organization or agency and that possesses the following characteristics:

(1) The system is primarily or exclusively used by other library organizations or agencies.

(2) The system provides users with cooperative services or activities beyond traditional interlibrary loan services.

(3) The system is not restricted in access or use to units, departments, branches, or components that are part of the library organization or agency sponsoring the system.

(4) The system is constituted under a formal written instrument that describes services, activities, and membership offered by the system.

(Authority: 20 U.S.C. 1021)

§ 779.8 What is the time period for expenditure of grant funds?

Grant funds for these projects may be expended over a three-year period.

(Authority: 20 U.S.C. 1047)

Subpart B—How Does One Apply for an Award?

§ 779.10 What assurance must an applicant give regarding maintenance of effort?

An applicant shall, in its application, give satisfactory assurance that, if it is selected as a grantee, it will—

(a) Expend, for the same purpose as the purpose for which the grant is made, an amount not less than one-third of the grant during the three-year period for which the grant is made; and

(b) Make that expenditure from funds other than funds received under Title II of the Higher Education Act of 1965.

(Authority: 20 U.S.C. 1047)

Subpart C—How Does the Secretary Make an Award?

§ 779.20 How does the Secretary evaluate an application?

(a) The Secretary uses the general selection criteria in § 779.21(a) and the special program criteria in § 779.21(b) to evaluate applications for new grants.

(b) The maximum possible score for the general criteria is 60 points.

(c) The maximum possible score for the special criteria is 40 points.

(Authority: 20 U.S.C. 1047)

§ 779.21 What selection criteria does the Secretary use?

(a) *General selection criteria.* An applicant may receive up to 60 points under the general selection criteria in this section, for each type of grant, as follows:

(1) *Project description* (10 points). The Secretary reviews each application to determine the quality of the applicants project, including—

(i) A concise description of the project;

(ii) A clear statement of the project objectives; and

(iii) Evidence of adequate planning.

(2) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The effectiveness of the plan of management to assure proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program; and

(iv) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(3) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (a)(3) (i) and (ii) of this section will commit to the project; and

(iv) Knowledge of librarianship and library technology.

(4) *Budget and cost-effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(5) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(6) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plans for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Are objective and produce data that are quantifiable.

Cross Reference. (See 34 CFR 75.590 Evaluation by the grantee.)

(b) *Special program criteria.* An applicant may receive up to 40 points under the special program criteria in this section for each type of grant, as follows:

(1) *Networking Equipment Grant.* The Secretary reviews each Networking Equipment Grant application to determine the extent to which—

(i) The project strengthens the academic programs of the institution;

(ii) There is a need for special assistance as evidenced by the inability of the institution, because of fiscal constraints institutional size, or any other factors—

(A) To plan, develop, acquire, install, maintain, or replace technological equipment with its existing resources; and

(B) To participate in resource-sharing networks;

(iii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iv) There is evidence of strong and continuing institutional willingness to share library resources and to participate in cooperative arrangements with other libraries;

(v) The project would increase local, regional, or national access to materials; and

(vi) The applicant possesses, or will possess, after an award of a grant under this program, equipment compatible with that of other members of the network.

(2) *Joint-Use Grant.* The Secretary reviews each Joint-Use Grant application to determine the extent to which—

(i) There is a need for special assistance as evidenced by the inability of the institution to establish and strengthen joint use of library facilities, resources, or equipment with its existing resources because of fiscal constraints, institutional size, or any other factors;

(ii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iii) There is evidence of willingness to share library resources and to participate in cooperative arrangements with other libraries;

(iv) The academic programs of the institutions of higher education described in the application would be strengthended by the project;

(v) Local, regional, or national resource sharing would increase;

(vi) Project equipment would be compatible with that of other networks; and

(vii) Technological expertise would be shared with the library community.

(3) *Services to Institutions Grant.* The Secretary reviews each Services to Institutions Grant application to determine the extent to which—

(i) The project would establish, develop, or expand local, regional, or national resource-sharing programs;

(ii) There is a demonstrated level of support from institutions of higher education that the project is needed and desired;

(iii) There is evidence of the applicant's commitment to the project and capability to continue the project, and of the likelihood that the applicant will build upon the project when the grant period ends; and

(iv) There is evidence that formal written cooperative agreements to provide library and information services exist between the applicant and the institutions of higher education identified in the application.

(4) *Research and Demonstration Grant.* The Secretary reviews each Research and Demonstration Grant

application to determine the extent to which—

(i) The applicant proposes an innovative approach in utilizing technology for library services;

(ii) There is evidence from library users, library educators, or library administrators that the research or demonstration project is desirable;

(iii) The project would meet a special national or regional need in utilizing technology to enhance library or information sciences; and

(iv) The project has been developed in consultation with leading experts and has taken account of current research.

(Authority: 20 U.S.C. 1047)

Subpart D—What Conditions Must Be Met After an Award?

§ 779.30 What agency must be informed of activities funded by this program?

Each institution of higher education that receives a grant under this part shall inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Authority: 20 U.S.C. 1022)

[FR Doc. 88-6137 Filed 3-18-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.197]

Notice Inviting Applications for New Awards Under the College Library Technology and Cooperation Grants Program for Fiscal Year 1988

Purpose of Program: To encourage resource-sharing projects among the libraries of institutions of higher education and to imrprove the services provided to them by public and nonprofit private organizations.

Deadline for Transmittal of Applications: May 16, 1988

Deadline for Intergovernmental Review: July 15, 1988

Available Funds: $3,590,000

Estimated Average Size of Awards: Networking Equipment Grant—$30,000, Joint-Use Grant—$125,000, Services to Institutions Grant—$25,000, Research and Demonstration Grant—$100,000.

Estimated Number of Awards: Networking Equipment Grant—67, Joint-Use Grant—5, Services to Institutions Grant—10, Research and Demonstration Grant—7.

Project Period: 12–36 months. The Department is not bound by any estimates in this notice.

Application: This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 79 (Intergovernmental Review of Department of Education Programs and Activities); (b) The regulations governing the College Library Technology and Cooperation Grants Program as proposed to be codified in 34 CFR Part 779.

Applications are being accepted based on the notice of proposed rulemaking which is published in this issue of the **Federal Register.** If any substantive changes are made in the final regulations for this program, applicants will be given the opportunity to revise or resubmit their applications.

Intergovernmental Review of Federal Programs: The regulations implementing Executive Order 12372, "Intergovermental Review of Federal Programs", are in 34 CFR Part 79.

The objective of Executive Order 12372 is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list pubished in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.197, U.S. Department of Education, M.S. 6355, 400 Maryland Avenue, SW., Washington, DC 20202.

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA No.: 84.197), Washington, DC 20202

or

(2) Hand deliver the original and three copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA No.: 84.197), Room 3633, Regional Office Building Number 3, Seventh and D Streets, SW., Washington, DC 20202

Note to Applicants: Although 34 CFR 75.109(a) requires only an original and two copies, an additional copy is requested for this program.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. (2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed post card containing the CFDA number and title of this program. (3) The applicant *must* indicate on the envelope the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: These forms and instructions are found in the appendix to this notice. No grants may be awarded unless a completed application form has been received.

For Further Information Contact: Frank A. Stevens or Louise V. Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208–1430. Telephone Number: (202) 357–6315.

Assessment of Educational Impact: The Secretary requests comments on whether any information collection in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: March 16, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

Appendix

Form Approved

[OMB No. 1850–0622]

Expiration Date 1/1991

Department of Education, Office of Educational Research, and Improvement

Washington, DC 20208

Application Instructions—Fiscal Year 1988 College Library Technology and Cooperation Grants Program

General

The application is divided into 3 parts. Applications to be submitted should follow this organization.

The Sections are as follows:

PART I: Federal Assistance Face Sheet (Form SF 424)

PART II: Budget Data

PART III: Program Narrative—General and Special

No grants may be awarded unless a completed application form has been received (20 U.S.C. 1021, 1041; 34 CFR 779).

Submit the original application and three copies to:

U.S. Department of Education, Application Control Center, Attention: 84.197, 400 Maryland Avenue, SW Washington, DC 20202

Note: In addition to the instructions listed below, joint applicants should refer to sections 75.127 through 75.129 of the Education Department General Administrative Regulations (EDGAR) which explains group applications.

Instructions for Part I—Federal Assistance Face Sheet (SF–424)

This is a standard form used by applicants as a required face sheet for applications.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Items 1, 6, 7, 11, 14, 17 and 19 are reprinted.

Items which are not applicable have been marked "N/A".

Joint applications must include a separate face sheet (SF 424) for each cooperating institution and must designate a primary applicant as fiscal agent. (See EDGAR 75.127–129)

Below is a list of instructions to assist you in completing the form.

Item 4. Indicate the legal name of applicant, the name of the primary organization unit which will undertake the assistance activity, complete the address of applicant, and the name and telephone number of the person who can provide further information about this request.

Item 5. Employer identification number assigned by Internal Revenue Service (IRS). If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full ED entity number in item 5.

Item 12. For joint applications, the total amount of funding requested for the project should be given in Item 12, of the primary applicants; this item should be blank on the SF 424's of the other institutions. Section IV "Remarks" of the SF 424's should state that a joint application is being submitted and list the institutions.

Item 16. Indicate the proposed length of the project. This may be one, two or three years.

Item 22. The applicant certifies that they have complied with all state regulations and procedures required under E.O. 12372.

Item 23. Give the name and title of the person authorized by the applicant to sign applications for Federal assistance.

Designation of Different Payee: If the payee will be other than the applicant, enter the following information in Section IV—Remarks, of the SF 424: the payee's name, complete address, and Employer Identification number or ED entity number. If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

[BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)	☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☒ APPLICATION	2. APPLICANT'S APPLICATION IDENTIFIER	a. NUMBER b. DATE Year month day 19
		3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE	a. NUMBER b. DATE ASSIGNED Year month day 19
		Leave Blank	

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
a. NUMBER 8 4 . 1 9 7
MULTIPLE ☐
b. TITLE College Library Technology & Cooperation Grants Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify)
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) A

12. PROPOSED FUNDING		13. CONGRESSIONAL DISTRICTS OF:	
a. FEDERAL	$ .00	a. APPLICANT	b. PROJECT
b. APPLICANT	.00		
c. STATE	.00	15. PROJECT START DATE Year month day 19	16. PROJECT DURATION Months
d. LOCAL	.00		
e. OTHER	.00	18. DATE DUE TO FEDERAL AGENCY ▶ Year month day 19	
f. Total	$ .00		

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter A

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify): NA
Enter appropriate letter(s)

19. FEDERAL AGENCY TO RECEIVE REQUEST: U.S. Department of Education
a. ORGANIZATIONAL UNIT (IF APPROPRIATE): Application Control Center
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS: 400 Maryland Avenue, S.W. Washington, D.C. 20202-3561

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19
25. FEDERAL APPLICATION IDENTIFICATION NUMBER
26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING	
a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

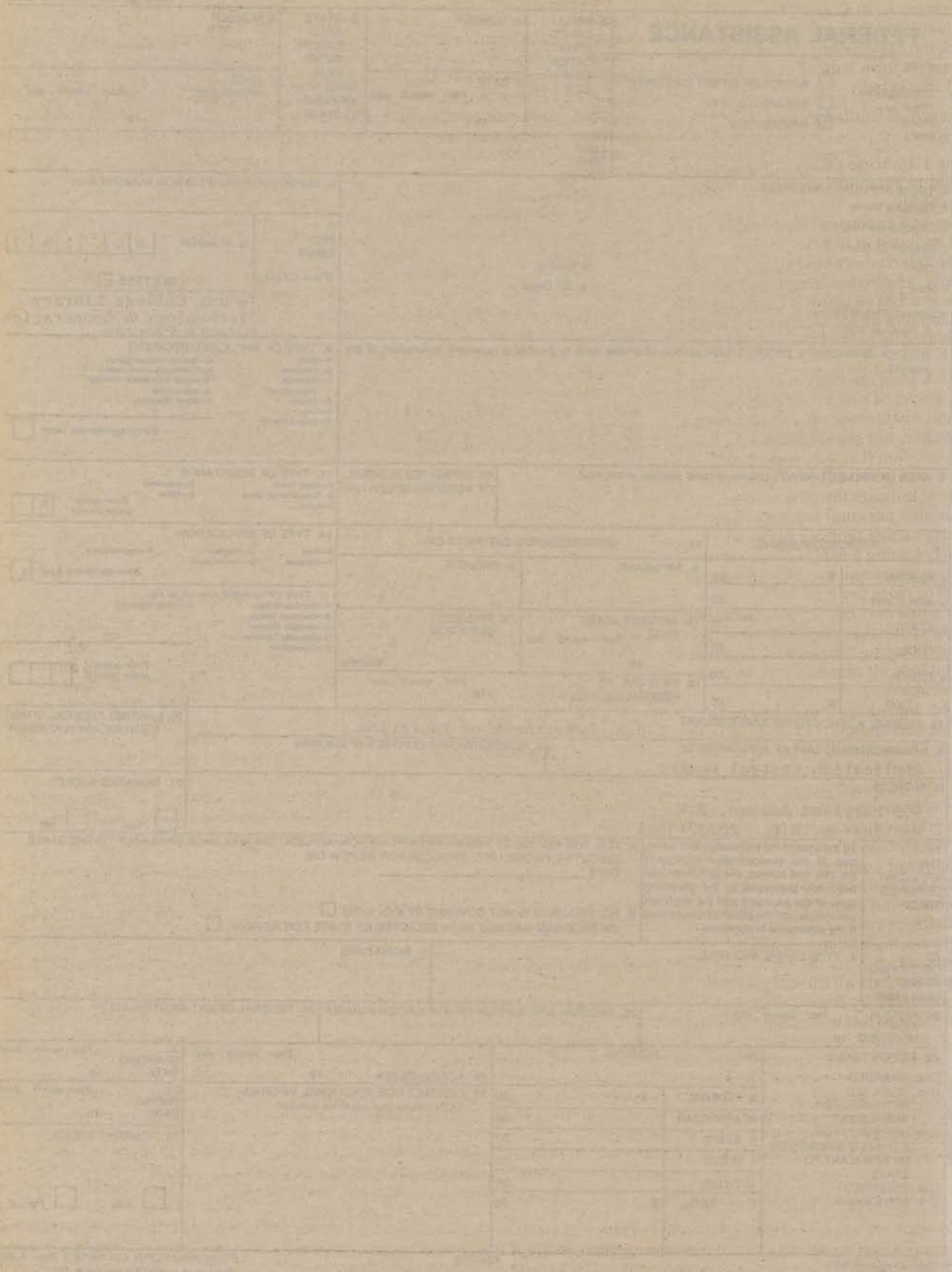
29. ACTION DATE▶ Year month day 19
30. STARTING DATE Year month date 19
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)
32. ENDING DATE Year month date 19
33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev 4-84)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C



Instructions For Part II—Budget

Sections A, B, C, and D are to be completed by the applicant. Please check the appropriate box at the top of the budget form indicating the type of grant requested.

Section A—Detailed Budget by Categories

Line 1. Indicate salary and wages to be paid to personnel employed in the project only.

Fees and expenses for consultants are to be included in line 6.

Line 2. Include contributions for Social Security, employees insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost note.

Line 3. Indicate travel of employees only. Travel of consultants, resources persons, evaluators, etc., should not go on this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Line 4. Indicate the cost of non-expendable personal property. Such property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit.

A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all personal property as defined above.

Line 5. Include cost of consumable supplies and materials to be used in the project. These should be items which cost less than $500 per unit with a useful life of less than two years.

Line 6. Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies or equipment listed above); and (2) subgrants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 7. Indicate all direct costs not clearly covered by lines 1–6 above.

Line 8. Show totals for lines 1 through 8.

Line 9. Indicate the amount of indirect cost. Indirect costs must be the institution's federally negotiated rate.

Line 10. Total lines 8 and 9.

Section B—Estimate of Expenditures

Lines 1, 2 and 3. If project is more than one year, indicate expenditure of funds for each year the project is planned.

Section C—Budget Narrative

Attach a budget narrative which explains amounts for individual direct costs categories including the indirect cost rate and base. This narrative should not exceed five double-spaced pages.

Include in the narrative details about the following items:

Section A, Salaries and Wages from Line 1:

Show the total commitment of time and the salary to be charged to the project for each key member of the project staff.

Equipment and Supplies from Lines 4 and 5:

List items of equipment and supplies in the following format: Item, Number and Units, Cost per Unit, Total cost.

Contractual Services from Line 6:

Indicate the names of the agency or organization that will receive each proposed contract, if available. If not, clearly indicate what factors the number on line 6 is based upon.

Other from Line 7:

Provide itemized breakdown of all items figured into the number on line 7.

Indirect costs from Line 9:

Attach a copy of the approved negotiated rate agreement.

Section D—Maintenance of Effort

Sign and date the assurance of maintenance of effort as required under 779.9 of the program regulations.

Instructions for Part III—Program Narrative

The narrative should address how the project will meet the objectives of the program as stated in the regulations. The narrative portion of the application should not exceed 20 double-spaced typewritten pages.

It should be typed on one side only of standard 8½" 11" paper, consecutively paginated, and stapled at the upper left corner. The application should not be bound or enclosed in a folder. The type of grant requested, either Networking Equipment Grant, Joint-Use Grant, Services to Institutions Grant or Research and Demonstration Grant, should be clearly stated on the first page of the program narrative.

The program narrative must include a response to the General Selection Criteria in Section 779.21 (a) and the Special Program Criteria in Section 779.21 (b) of the program regulations. *Please be careful to respond to the Special Program Criteria in § 779.21 (b) which relate directly to the type of grant you are seeking.* Applicants may provide other relevant information, including pertinent exhibits, but each application must be a self-contained document.

It is advisable to respond to each of the criterion in the order presented.

In responding to the criteria under 779.21 (a)(4) *Budget and Cost Effectiveness*, applicants are encouraged to submit an itemized breakdown and justification of the proposed budget.

It is suggested that single-page abstract be prepared which summarizes the content of the proposed project. The abstract should be used as a cover page to the program narrative and provide the following information: (a) Name and address of applicant; (b) title of project; (c) project director's name, title address, and telephone number; (d) funding level being requested; (e) beginning and ending date of the project period; and (f) a single-spaced statement of 150 words or less summarizing the proposed project.

Narratives for joint applicants (a single application submitted by combinations of institutions) should detail the activities that each member of the group plans to perform (see § 75.127 through § 75.129 of the Education Department General Administrative Regulations, which explains group applications)

BILLING CODE 4000-01-M

PART II - BUDGET INFORMATION
FY 88

CHECK TYPE OF GRANT REQUESTED

___A. Networking Equipment ___C. Services to Institutions Grant

___B. Joint-Use Grant ___D. Research and Demonstration Grant

Section A - Detailed Budget by Categories

1. Salary and Wages	$
2. Fringe Benefits	
3. Travel	
4. Equipment	
5. Supplies	
6. Contractual Services	
7. Other (itemize)	
8. Total Direct Costs (lines 1 to 7 totaled)	
9. Total Indirect Costs	
10. Total Project Costs (lines 8 - 9)	

Section B - Estimate of Expenditures

1. Year One	$
2. Year Two	
3. Year Three	

Section C - BUDGET NARRATIVE - see Budget Information.

Section D - Maintenance of Effort

An assurance of maintenance of effort is required under section 779.9 of the program regulations. Please certify that:

If selected as a grantee, the applicant will expend, for the same purpose as the grant, an amount not less than one-third the grant during the period for which the grant is sought; and make that expenditure from funds other than funds received under Title II of the Higher Education Act.

Signed_____ Date_____

Title_____

[FR Doc. 88-6138 Filed 3-18-88; 8:45 am]
BILLING CODE 4000-01-C

federal register

Monday
March 21, 1988

Part VII

Department of Health and Human Services

42 CFR Part 1003

Civil Money Penalties for Failure To Report Medical Malpractice Payments and for Breaching the Confidentiality of Information; Proposed Rule

45 CFR Part 60

National Data Bank for Adverse Information on Physicians and Health Care Practitioners; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1003

Civil Money Penalties for Failure To Report Medical Malpractice Payments and for Breaching the Confidentiality of Information

AGENCY: Office of the Secretary, Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish civil money penalties (CMPs) against any individual or entity that fails to report information on medical malpractice payments in accordance with section 421(c) of Pub. L. 99–660, Title IV, the Health Care Quality Improvement Act of 1986, and against any individual or entity who breaches the confidentiality of information reported to the National Data Bank established to collect and disseminate required information in accordance with section 427(b) of that Act.

DATE: To assure consideration, comments must be mailed and delivered to the address provided below by May 20, 1988.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–15–P, Room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5643, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–15–P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection beginning approximately two weeks after publication in Room 5643, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m., (202) 472–5270.

FOR FURTHER INFORMATION CONTACT: James Patton, Office of Investigations, (301) 594–3957.

SUPPLEMENTARY INFORMATION:

I. Background

Health Care Quality Improvement Act

The Health Care Quality Improvement Act, Title IV of Pub. L. 99–660, established specific requirements for the reporting and release of information concerning (1) the payments made for the benefit of physicians, dentists and other health care practitioners as a result of medical malpractice actions and claims, and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists. The stated purpose of these provisions is both to improve the quality of medical care by identifying those phsyicians and dentists who are engaged in unprofessional behavior, and to restrict the ability of those incompetent phsyicians and dentists to move from State to State without disclosure or discovery of their damaging or incompetent performance.

The Act requires the Secretary to establish, either directly or through an appropriate public or private agency designated by the Secretary, a National Data Bank to serve as a national source of information on physicians, dentists and, under cetain circumstances, other health care practitioners concerning: (1) Payments made as a result of medical malpractice actions or claims; (2) adverse licensure actions taken by Boards of Medical Examiners and equivalent State licensing boards for other health care practitioners; and (3) adverse actions on clinical privileges taken by health care entities, such as suspensions for 30 days or longer. (Reporting of information on each of the three categories for physicians and dentists is required. For other licensed health care practitioners, reporting is required for medical malpractice payments, is voluntary on the part of health care entities for adverse actions on clinical privileges, and is not applicable to licensure actions.)

The reporting requirements to the National Data Bank would apply, as appropriate, to hospitals, health care entities, boards of medical examiners, professional societies of physicians, dentists or other licensed health care practitioners, along with individuals and entities (including insurance companies) making payments with respect to medical malpractice actions or claims. The Act provides that information reported to the National Data Bank is confidential and is to be disclosed only for purposes specified in the Act. This information may be used solely with respect to activities in furtherance of the quality of health care. The specific procedures and requirements for reporting and dissemination of this information by the National Data Bank is published elsewhere in this issue of the **Federal Register**.

Existing OIG Civil Money Penalty Sanctions

Until the enactment of the Department's civil money penalty (CMP) authorities under section 2105 of Pub. L. 97–35, the Federal government had to rely solely upon litigation under the False Claims Act or criminal proceedings. Under this CMP authority, the Department's Office of Inspector General has been authorized under section 1128A of the Social Security Act, and through implementing regulations at 42 CFR Part 1003, to administratively impose CMPs and assessments for a number of false or improper billing or quality of care violations in the Medicare, Medicaid, or Maternal and Child Health Services Block Grant programs. These existing CMP authorities have specifically served to strengthen the Department's ability to protect the health care programs and its beneficiaries against those persons or organizations that would defraud, abuse or otherwise circumvent those programs by creating an administrative action to supplement court litigation.

Congress has increasingly used the CMP authorities to insure compliance with its intended statutory provisions. The original CMP authorities were specifically designed to address penalties for false claims and unnecessary services. The authority for levying CMP was further expanded in recent years to address issues involving the quality of care furnished to program beneficiaries and others. With the enactment of the Health Care Quality Improvement Act, the Congress has broadened OIG's existing CMP authorities to specifically enforce reporting and confidentiality of data reporting elements of the National Data Bank.

Under the current CMP authorities, while there is a maximum penalty amount established for each type of CMP violation, the statute requires the Department to take into account a number of factors in determining the amount of any penalty or assessments imposed. The OIG regulations at 42 CFR 1003.106 presently include specific guidelines that set forth various factors and circumstances that may be considered mitigating—resulting in a reduced penalty or assessment amount, and those that would be considered aggravating—resulting in a higher penalty or assessment up to the specified amount stated in the statute.

In addition, the existing OIG regulations at 42 CFR Part 1003 addressing the Department's CMP authorities provide to those persons and organizations against whom penalties or assessments have been imposed an opportunity for a hearing on the record in accordance with the Administrative Procedure Act, for appeal to the Secretary, and for the judicial review of the Secretary's final determination.

II. Provisions of the Proposed Rule

CMP for violations under Title IV of Pub. L. 99–660

In an effort to (1) encourage the efficient and timely collection and reporting of medical malpractice payments by any person or entity, including insurance companies, and (2) promote effective professional peer review by providing for the protection and confidentiality of the information furnished under these provisions, sections 421(c) and 427(b)(2) of Pub. L. 99–660 set forth two new authorities as a basis for taking CMP action.

A. CMP for Failure To Report Medical Malpractice Payments

The medical malpractice system has been the primary approach that aggrieved patients have taken to deal with inadequate medical care, and the effective reporting of such malpractice payment data can provide important information for evaluating the credentials of health care providers. As indicated above, and addressed further in the accompanying Public Health Service (PHS) regulations published in this issue of the **Federal Register**, any person or entity, including an insurance company, that makes payment on a medical malpractice action or claim will be required to report such information, and the circumstances of such settlement, to the National Data Bank established by the Secretary. Also, this information must be reported to the appropriate licensing board(s) in the state in which the medical malpractice action or claim arose. To assure the timely collection and reporting of medical malpractice payments, the OIG has been delegated the specific responsibility under section 421(c) of the Act to levy a CMP of up to $10,000 against any individual or entity that fails to report each such payment on a timely and complete basis, as specified in proposed 42 CFR 60.4, 60.5 and 60.6 of the PHS regulations.

B. CMP for Breaching Confidentiality of Information

In accordance with the statute and the proposed PHS regulations, all information reported and collected by the national data bank under these provisions with respect to a physician, dentist or other licensed practitioner is to be furnished, upon request, to State licensing boards, hospitals, and other health care entities (1) that have entered, or may be entering, into an employment or affiliation relationship with the physician or practitioner, or (2) to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff. Such information is intended to be used solely with respect to activities for the betterment of health care provided by the individuals or entities requesting this information, and is considered confidential. Except for professional review activities and medical malpractice actions, this information will not be disclosed to any party other than to the physician or practitioner involved. State licensing boards and other parties specifically authorized under other provisions of law to release such information may continue to do so. (See accompanying PHS regulations for specific information regarding disclosure of National Data Bank information.)

To protect the confidentiality of information reported under this provision, the OIG has been delegated the specific responsibility under section 427(b)(2) of the Act to levy for each violation a CMP of up to $10,000 against any person who inappropriately discloses such information.

The CMP action may lie against State licensing board employees, employees of other health care entities, including health maintenance organizations, and employees of the Secretary or a private or public agency, or directly against those entities or organizations that violate the confidentiality requirements of section 427(b)(1). In any case in which it is determined that more than one party was responsible for improperly disclosing confidential information in accordance with these provisions, a penalty, up to the maximum limit, may be imposed against each responsible individual, entity or organization. Utilization and Quality Peer Review Organizations (PROs) under Part B of Title XI of the Social Security Act are governed by separate confidentiality and penalty provisions contained in 42 CFR Part 476.

C. Determining the Amount of Penalty

In determining the penalty amount for each occurrence, we are proposing in these regulations five criteria for consideration: (1) The nature and circumstances resulting in the failure to report medical malpractice payments or the disclosure of information; (2) the degree of culpability of the person or entity in failing to provide timely and complete payment data or in breaching the confidentiality of collected information; (3) the materiality or significance of omission of the information to be reported with regard to medical malpractice payment judgments or settlements, or the materiality of the improper disclosure of information; (4) any prior history of the person or entity with respect to these occurrences; and (5) in general, other matters required by justice.

The notification, effectuation and appeal procedures under existing CMP regulations will be used for all violations resulting from these provisions.

Non-substantive Regulatory Changes

In addition to these changes outlined above, we are making a number of minor conforming and non-substantive revisions to these regulations by inserting "OIG" for "Secretary" in section 1003.105, and by deleting the existing paragraph (b) in section 1003.114 which is now obsolete.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule, that is, any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that this proposed rule does not meet the criteria for a major rule as defined by section 1(b) of the Executive Order. As indicated, these proposed regulations would establish new authority for the OIG to impose CMPs against those who fail to report required information and against those who breach the confidentiality of the information gathered by the National Data Bank. As such, we have concluded that this regulation would have no direct effect on the economy or on Federal or State expenditures, and that an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 5 U.S.C. 604(a), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action would have on small entities, and to develop lower cost or

burden alternatives. As indicated above, these proposed regulations would have no significant economic impact. While some CMPs imposed by the OIG as a result of these regulations could have an impact on some small business entities, we do not anticipate that a substantial number of small entities would be affected by this rulemaking. Therefore, we have concluded that an initial regulatory flexibility analysis is not required for this rulemaking.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. While the proposed regulations prepared by PHS contain specific information collection requirements, we have determined that these proposed penalty provisions do not contain such information collection requirements and would not increase the Federal paperwork burden on the public and private sectors.

IV. Other Required Information

A. Response to Comments

Because of the number of comments we receive on proposed regulations, we cannot acknowledge or respond to these comments individually. However, in preparing the final rule we will consider all comments received in response to these penalty provisions and respond to them in the preamble to that document.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Chapter V, Part 1003 is proposed to be amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 1003 would be revised to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act, and secs. 421(c) and 427(b)(2) of Pub. L. 99-660 (42 U.S.C. 1302, 1320a-7, 1320a-7a, 1395u(j) and 1395u(k), 11131(c) and 11137(b)(2)).

2. Section 1003.100 would be revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1842(j) and 1842(k) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99-660 (42 U.S.C. 1320a-7(c), 1320a-7a, 1395u(j) and 1395u(k), 11131(c), and 11137(b)(2).

(b) *Purpose.* This part (1) establishes procedures for imposing—

(i) Civil money penalties and assessments against persons who have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services Block Grant programs, and

(ii) Civil money penalties against those who fail to report medical malpractice payments or who breach the confidentiality of information reported under Title IV of Pub. L. 99-660, as specified in 42 CFR Part 60 of this title;

(2) Establishes procedures for suspending from the Medicare and Medicaid programs, certain persons against whom a civil money penalty or assessment has been imposed; and (3) specifies the appeal rights of persons subject to a penalty or assessment.

3. Section 1003.101 would be amended by adding a definition for the term "medical malpractice action or claim" to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

"Medical malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's or other health care practitioner's provision of, or failure to provide, health care services, including a legal action brought in any State or Federal court or other adjudicative body.

* * * * *

4. Section 1003.102 would be amended by redesignating and republishing existing paragraph (c) to read as paragraph (d); and by adding a new paragraph (c) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(c) The OIG may impose a penalty against any person or entity, including an insurance company, that fails to report information on a payment of a medical malpractice claim in accordance with section 421 of Pub. L. 99-660 (42 U.S.C. 11131) and regulations in § 60.6 of this title, and against any person or entity that improperly discloses information in violation of section 427 of Pub. L. 99-660 (42 U.S.C. 11131) and regulations in § 60.11 of this title.

(d)(1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section, each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a request for payment described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

5. Section 1003.103 would be revised to read as follows:

§ 1003.103 Amount of penalty.

(a) The OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under paragraphs (a) and (b) of § 1003.102.

(b) The OIG may impose a penalty of not more than $10,000 against any person or entity, including an insurance company, for each occurrence subject to a determination under paragraph (c) of § 1003.102.

6. Section 1003.105 would be amended by revising paragraph (a) to read as follows:

§ 1003.105 Suspension from participation in Medicare and Medicaid.

(a) A person subject to a penalty or assessment determined under § 1003.102 (a) and (b) may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he shall specify. The State agency may request the OIG to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The OIG will notify the State agency if and when it waives suspension in response to such a request.

* * * * *

7. Section 1003.106 would be amended by revising paragraphs (a), (b) introductory text, (b)(1), (2) and (3), and (c) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a)(1) In determining the amount of any penalty or assessment, in accordance with § 1003.102 (a) and (b), the OIG will take into account:

(i) The nature of the claim or request for payment and the circumstances under which it was presented,

(ii) The degree of culpability of the person submitting the claim or request for payment,

(iii) The history of prior offenses of the person submitting the claim or—request for payment,

(iv) The financial condition of the person presenting the claim or request for payment, and

(v) Such other matters as justice may require.

(2) In determining the amount of any penalty in accordance with § 1003.102(c), the OIG will take into account:

(i) The nature and circumstances resulting in the failure to report medical malpractice payments or the improper disclosure of information,

(ii) The degree of culpability of the person or entity, including the insurer, in failing to provide timely and complete payment data or in breaching the confidentiality of reported information,

(iii) The materiality, or significance of omission, of the information to be reported with regard to medical malpractice payment judgments or settlements, or the materiality of the improper disclosure of information.

(iv) Any prior history of an individual or entity with respect to these violations, and

(v) Such other matters as justice may require.

(b) *Guidelines for determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered:

(1) *Nature and circumstances of the claim.* It should be considered a mitigating circumstance if all the items or services subject to a determination under § 1003.102 (a) and (b) included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than $1,000. It should be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many such items or services (or the nature and circumstances indicate a pattern of claims for such items or services), or the amount claimed for such items or services was substantial.

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if the respondent knew the item or service was not provided as claimed, or if the respondent knew that no payment could be made because he had been excluded from program reinbursement as specified in § 1003.102(a)(2) or because payment would violate the terms of an assignment agreement or an agreement with a State agency under § 1003.102(b).

(3) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a determination under § 1003.102 (a) and (b), the respondent was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

* * * * *

(c) As guidelines for determining the amount of the penalty and assessment to be imposed for every item, service or incident subject to a determination under § 1003.102 (a) and (b).

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages sustained by the United States, or any State, as a result of claims subject to a determination under § 1003.102 (a) and (b).

8. Subsection 1003.109 would be amended by revising paragraph (a) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty and assessment, or to suspend a respondent from participation in Medicare or Medicaid, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and suspension, as applicable. The notice will include:

(1) Reference to the statutory basis for the penalty, assessment, and suspension;

(2) With respect to determinations under § 1003.102 (a) and (b), a description of the claims and requests for payment with respect to which the penalty, assessment, and suspension are proposed (except in cases where the Inspector General is relying upon statistical sampling pursuant to § 1003.133, in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and shall also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) With respect to determinations under § 1003.102(c), a description of the episode and the circumstances under which the penalty is being imposed;

(4) The reason why such claims and requests for payment, or with respect to Title IV of Pub. L. 99–660, such failure to report required information or breach of confidentiality, subject the respondent to a penalty, assessment, and suspension (where applicable); the amount of the proposed penalty, assessment, and the period of proposed suspension (where applicable);

(5) Any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty and assessment and the period of suspension (where applicable);

(6) Instructions for responding to the notice, including a specific statement of respondent's right to a hearing, of the fact that failure to request a hearing within 30 days permits the imposition of the proposed penalty, assessment, and suspension without right to appeal, and of respondent's right to request an extension of time in which to respond to the notice and a copy of the rules contained in this part.

* * * * *

9. Section 1103.114 would be amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1003.114 Issues and burden of proof.

(a) To the extent that a proposed penalty and assessment is based on claims or requests for payment presented on or after August 13, 1981, the Inspector General must prove by a

preponderance of the evidence that the respondent presented or caused to be presented such claims or requests for payment as described in § 1003.102 (a) and (b).

(b) To the extent that a proposed penalty is based on a violation of Title IV of Pub. L. 99–660, the Inspector General must prove by a preponderance of the evidence that the person or entity failed to report medical malpractice payments on a timely and complete basis, or a party breached the confidentiality of information reported, as set forth in § 1003.102(c) and in 42 CFR Part 60 of this title.

(c) Where a final determination that the respondent (1) presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102 (a) and (b), or (2) failed within the scope of § 1003.102(c) to report medical malpractice payments or breached the confidentiality of information, has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

* * * * *

10. Section 1003.125 would be amended by revising paragraph (c) to read as follows:

§ 1003.125 Initial decision; administrative review; finality.

* * * * *

(c) The findings of fact shall include a finding on each of the following issues for every item, service or occurrence with respect to which a penalty or assessment was proposed.

(1) Whether the item, service or occurrence is subject to a determination under § 1003.102;

(2) If the item, service or occurrence is subject to a determination under § 1003.102 whether there are mitigating or aggravating circumstances as described in § 1003.106.

* * * * *

Dated: July 15, 1987.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: October 9, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88–5984 Filed 3–18–88; 8:45 am]

BILLING CODE 4150–04–M

45 CFR Part 60

National Data Bank for Adverse Information on Physicians and Health Care Practitioners

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes rules that would govern the reporting and release of information concerning (1) payments made for the benefit of physicians, dentists and other health care practitioners as a result of medical malpractice actions and claims, and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists. This information would be collected in and released from a National Data Bank, in accordance with the requirements of Part B of the Health Care Quality Improvement Act of 1986, Title IV of Pub. L. 99–660.

DATE: As discussed below, comments are invited. To be considered, comments must be received by May 20, 1988.

ADDRESSES: Written comments should be addressed to Dr. J. Jarrett Clinton, Director, Bureau of Health Professionals (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Margaret Wilson, Ph.D., Bureau of Health Professions, at the above address; telephone 301 443–3626.

SUPPLEMENTARY INFORMATION: Part B of Title IV of the Health Care Quality Improvement Act of 1986 ("the Act"), Pub. L. 99–660, enacted on November 14, 1986, and amended by Pub. L. 100–177, requires the Secretary of Health and Human Services to establish, either directly or through an appropriate public or private agency designated by the Secretary, a National Data Bank to collect and release information concerning payments made on behalf of physicians, dentists, and other licensed health care practitioners as a result of medical malpractice actions and claims, and information concerning certain adverse actions regarding the licenses and clinical privileges of physicians and dentists. In addition, Part A of the Act provides, for hospitals and members of bodies that conduct peer review, immunity from liability for damages with respect to actions taken in the course of such review. The purposes of the Act are to:

(1) Improve the quality of medical care by encouraging physicians and dentists to identify, for disciplinary purposes, other physicians and dentists who engage in unprofessional behavior; and

(2) Restrict the ability of incompetent physicians and dentists to move from State to State without disclosure or discovery of their previous damaging or incompetent performance.

The Department was not able to comply with the statutory implementation date of November 14, 1987, for the establishment of the National Data Bank due to lack of available funds. The Secretary will announce the date of operation for the National Data Bank in an announcement in the **Federal Register**.

Individuals and entities will not be held responsible for any reporting requirements of the Act until the National Data Bank has been established and the Secretary has announced its operation. Further, data will only be collected from the date determined and announced by the Secretary, not from November 14, 1987.

These proposed regulations would implement the requirements for reporting to the National Data Bank and the procedures for obtaining information from the National Data Bank. These requirements would apply to hospitals; health care entities; boards of medical and dental examiners; professional societies of physicians, dentists, or other licensed health care practitioners; and individuals and entities (including insurance companies) making payments with respect to medical malpractice actions or claims. The Secretary regards the immunity provisions (Part A) of the Act as self-implementing. Thus, these proposed regulations do not address that portion of the Act.

The Act permits the Secretary to establish and operate the National Data Bank either directly or by contract with an appropriate private or public agency. See section 424(b) of the Act. The Secretary has chosen the latter method and, as indicated in § 60.4 of the proposed regulations, will announce the name, address, telephone number and other details concerning the National Data Bank through notice in the **Federal Register** as well as through press releases and notices to the various professional associations of hospitals, health care providers, and insurers, and to boards of medical examiners, among others.

It should be noted that section 427(c) of the Act, as amended, explicitly provides immunity in any civil action for any person or entity concerning reports made to the National Data Bank. This immunity also applies to the agency which will operate the National Data Bank through contract.

The National Data Bank would function as a national source of information on physicians, dentists, and, to a more limited degree, other health care practitioners concerning:

(1) Payments made as a result of medical malpractice actions or claims;

(2) Adverse licensure actions taken by Boards of Medical Examiners, and equivalent State licensing boards for other health care practitioners; and

(3) Adverse actions on clinical privileges taken by health care entities.

The Act requires the reporting of information in each of these three categories for physicians and dentists. Regarding other licensed health care practitioners, reporting is required for medical malpractice payments, is voluntary on the part of health care entities for adverse actions on clinical privileges, and is not applicable to licensure actions.

The Act further requires each hospital to request information from the National Data Bank every 2 years concerning physicians, dentists and other licensed health care practitioners on its medical staff (courtesy or otherwise) or who have clinical privileges. Inquiry is also required when a physician or health care practitioner applies for clinical privileges or a staff position. Other individuals and entities, as described below, are permitted to obtain reports from the National Data Bank. The Secretary stresses that the information from the National Data Bank would serve as only an indicator of professional quality and not as conclusive or complete evidence of it.

Fees will be imposed on individuals and entities who request information from the National Data Bank, pursuant to section 427(b) of the Act as amended. The fees will reflect the costs of processing requests for disclosure and of providing such information. The amounts of these fees will be announced in periodic notices in the **Federal Register.**

The Act and the proposed regulations provide that information reported to the National Data Bank is confidential and is to be disclosed only for the purposes specified in the Act. This information may be used solely with respect to activities in furtherance of the quality of health care. The Act provides a penalty of not more than $10,000 for each violation of this confidentiality provision. This penalty will be imposed through procedures published elsewhere in this issue of the **Federal Register** proposing to amend 42 CFR Part 1003. The organization which operates the National Data Bank will be required to verify the identity of all individuals and organizations which report and request information from the Data Bank and for individuals representing organizations, their affiliation to the requesting entity.

Although the statute does not require the application of these provisions to Federal health care entities, physicians, dentists and other health care providers, the intent of the law appears clear that coverage be as broad as possible, and hence that Federal providers be included to the extent feasible. Accordingly, the Secretary is pursuing the execution of Memoranda of Agreements with the Department of Defense, the Veterans Administration, and the Drug Enforcement Administration of the Department of Justice. Also, the Secretary is considering the manner in which health care providers in the Department of Health and Human Services will participate in this National Data Bank.

The major provisions of these proposed regulations are described below.

Section 60.3 Definitions.

The term "Physician" is defined in section 431(8) of the Act to include dentists as well as osteopathic physicians and allopathic physicians. For clarity, the Secretary is proposing to define the term in the traditional sense (i.e., osteopathic and allopathic physicians) and to refer to dentists separately.

The term "Board of Medical Examiners" is defined to include a Board of Osteopathic Examiners and a Board of Dentistry, since the regulations would also apply to both dentists and osteopathic physicians.

The term "Health care entity" includes a group medical practice which shares facilities, personnel, medical records, and responsibilities, has incomes set by contract, and follows a formal peer review process for furthering quality health care. "Health care entity," as defined, would also include Community and Migrant Health Centers and National Health Service Corps sites.

The Secretary notes that the Act (section 431(4)(B)) excludes from the definition of "Health care entity" a professional society which has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of health care practitioners. Since this exclusion is only relevant to the immunity provisions of the Act and does not concern the reporting or disclosure provisions, the proposed regulations do not reference this exclusion.

Section 60.5 When information must be reported.

The Act does not permit the Secretary to require reports less often than monthly (see section 424(a)). The Department therefore proposes to require that information be submitted to the National Data Bank within 30 days following the action to be reported. For medical malpractice payments, the 30-day period would begin when an actual payment is made, in whole or in part. For adverse actions on licenses and clinical privileges, the event triggering the 30-day period would be the date of decision by the Board or health care entity, rather than the effective date of the decision. It is the Secretary's view that the quality of health care can best be improved by incorporating information in the National Data Bank at the earliest practical time, consistent with the requirements of the Act. The effective date of the adverse action would be contained in the information reported to the National Data Bank under §§ 60.7 and 60.8.

The Department, as a routine procedure, intends to notify individuals who are the subject of reports, when the reports are received by the data bank.

Section 60.6 Reporting Medical Malpractice Payments.

Pursuant to the Act, this section would require the reporting of payments on medical malpractice actions or claims, regardless of the size of payment. The Act requires the Secretary to report to Congress, by November 14, 1988, on whether information on small payments and on *all* claims should continue to be required to be reported.

The Act provides a penalty of $10,000 for failure to report information on a payment required to be reported. This penalty will be imposed pursuant to procedures published elsewhere in this issue of the **Federal Register** proposing to amend 42 CFR Part 1003.

This section lists information which would be required to be reported concerning each payment. Similar lists are contained in §§ 60.7 and 60.8 for reporting licensure actions and professional review actions on clinical privileges. The Secretary invites comments on the information proposed to be reported. The information was determined as that necessary to carry out the purpose of the Act while

minimizing the reporting burden. The Secretary proposes to identify the physician, dentist or other health care practitioner who is the subject of a report as precisely as possible to avoid mistakes in using National Data Bank information.

Section 60.8 Reporting Adverse Actions On Clinical Privileges.

This section would require a health care entity to report:

(1) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(2) When it accepts the surrender of clinical privileges of a physician or dentist—

(i) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(ii) In return for not conducting such an investigation or proceeding or

(3) In the case of a health care entity which is a professional society, when it takes a professional review action which adversely affects the membership of a physician or dentist in the society.

Health care entities would be required to report when an individual has surrendered privileges in order to avoid an adverse action. An example of this is a physician's surrender of clinical privileges during, or to avoid, an investigation of possible incompetence. There is evidence that physicians have surrendered privileges prior to receipt of an adverse action or to preclude investigation of their competency in one health care entity, but continued or obtained privileges at another health care entity which had no knowledge of, or information on the reason for, the prior surrender. Congress intended this information to be included in the National Data Bank. These proposed requirements do not go beyond those of the Act.

It should be noted that the Act and the proposed regulations require health care entities to report to Boards of Medical Examiners who, in turn, must report to the National Data Bank. The Act also requires the Boards to monitor the compliance of health care entities with these provisions.

Under section 411(b) of the Act, the Secretary is required to provide a health care entity with an opportunity for a hearing before determining that the entity has failed to comply with the reporting requirements of the Act. Section 423(c)(1) provides that such a determination will result in the health care entity's loss of the immunity protection of the Act. Section 60.8(c) describes the availability of and method of requesting such a hearing, and also states that the loss of immunity will be effective for 3 years.

To help assure that the hearing process is administered as efficiently and cost-effectively as possible for the entities and the Federal Government, this provision would set forth procedures for determining if a hearing is warranted. These procedures would require that a health care entity's request for a hearing be submitted within 30 days after receipt of written notice from the Secretary describing the entity's noncompliance, and contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. The Secretary would be authorized to deny a hearing if:

(1) The request for a hearing is beyond the specified time limit;

(2) The entity fails to provide a statement of material factual issues in dispute; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

This provision would also state that the hearings will be held in the Washington, DC, metropolitan area. The Secretary has determined that this is necessary for efficiency and economy of administration.

Section 60.10 Obtaining information from the National Data Bank.

Section 60.10(a) specifies who may obtain information, and what information may be available, from the National Data Bank:

(1) A hospital that requests information concerning a physician, dentist or health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(2) A physician, dentist, or health care practitioner who requests information concerning himself or herself;

(3) A state licensing board or health care entity which has entered or may be entering an employment or affiliation relationship with a physician, dentist or health care practitioner, or to which the physician, dentist or health care practitioner has applied for clinical privileges or appointment to the medical staff;

(4) An attorney, or individual acting on his own behalf, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or health care practitioner who is also named in the action or claim. *Provided*, that this information will be disclosed only upon the submission of evidence that the hospital failed to obtain information from the National Data Bank as required by § 60.9(a) and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(5) A health care entity with respect to professional review activity; and

(6) A person or entity who requests information in a form which does not permit the identification of any particular health care entity, physician, other health care practitioner or patient.

Section 60.10(b) refers to procedures for obtaining National Data Bank information.

The Department proposes to implement the Act literally concerning who may obtain information, with the exception of medical malpractice actions.

Section 60.10(a) (4) and (6) are proposed to implement amendments made to the Act by Pub. L. 100–177. Section 60.10(a)(4), which would enable attorneys to obtain information in certain medical malpractice actions, is intended to "carry out" section 425(b) of the Act as provided in section 427(b)(1), as amended. Section 425(b) (see also proposed § 60.9(b) below) provides that if a hospital fails to request information from the National Data Bank as required by section 425(a) of the Act, then it is presumed to have knowledge of this information. In order for section 425(b) to be "carried out," it is necessary that the complainant in a medical malpractice action have access to the information that is to be imputed to the hospital.

Proposed § 60.10(a)(6) reflects another amendment to section 427(b)(1) of the Act, which is intended to enable individuals and entities to obtain information for purposes of research. Accordingly, information from the National Data Bank that does not permit identification of persons or health care entities is not considered confidential.

Section 60.11 Fees applicable to requests for information.

This section proposes fees which would apply to all requests for information from the National Data Bank. These fees, as provided in section 427(b)(4) of the Act, would be based on the costs of processing requests for disclosure and of providing such information. This notice sets forth the criteria for establishing the fees and the procedures for assessing and collecting fees. The actual amounts of the fees will be announced in periodic notices in the **Federal Register** published by the Secretary.

Section 60.13 How to dispute the accuracy of National Data Bank information.

This section proposes procedures for filing a dispute and revising disputed information. The Secretary proposes minimal involvement in the resolution of disputed information, leaving this to the individual practitioner and the entity submitting the disputed report. The regulation would provide for flagging information in the National Data Bank as "disputed" while a dispute is being resolved. In the event that a resolution is not reached by the parties, the Secretary would, upon written request, review the dispute and all relevant evidence. After review, the Secretary would either:

(1) Continue to note the information as "disputed" and include a brief statement by the physician or health care practitioner describing the disagreement, if the Secretary concludes that the information is accurate; or

(2) Send corrected information to previous inquirers if the Secretary concludes that the information was incorrect.

In order to carry out this provision, the Secretary would maintain a record of all inquiries made to the National Data Bank and any information provided as a result of an inquiry.

In light of the sensitivity of this information we specifically solicit comments on how disputed information should be handled prior to settlement of the dispute.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these proposed regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. These proposed regulations would establish procedures for the reporting and releasing of information from the National Data Bank on physicians, dentists and health care practitioners involved in medical malpractice actions and claims concerning certain adverse actions regarding their licenses and clinical privileges. As such, this proposed rule would have no direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

Sections 60.4, 60.6, 60.7, 60.8, 60.9 and 60.12 contain information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. The Department has submitted a copy of these information collection requirements to OMB for approval. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20505, ATTN: Desk Officer for HHS.

List of Subjects in 45 CFR Part 60

Health Professions, Malpractice, Insurance companies.

Accordingly, the Department of Health and Human Services proposes to add a new Part 60 to Title 45 of the Code of Federal Regulations, as set forth below.

Dated: August 18, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 9, 1987.

Otis R. Bowen,

Secretary.

PART 60—NATIONAL DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND HEALTH CARE PRACTITIONERS

Subpart A—General Provisions

Subpart B—Reporting of Information

Subpart C—Disclosure of Information by the National Data Bank

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by section 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

Subpart A—General Provisions

§ 60.1 The National Data Bank.

The Health Care Quality Improvement Act of 1986 (the Act), Title IV of Pub. L. 99–660, as amended, authorizes the Secretary to establish (either directly or by contract) a National Data Bank to collect and release certain information relating to the professional competence and conduct of physicians, dentists and other health care practitioners. These regulations set forth the reporting and

disclosure requirements for the National Data Bank.

§ 60.2 Applicability of these regulations.

These regulations establish reporting requirements applicable to hospitals; health care entities; Boards of Medical Examiners; professional societies of physicians, dentists or other licensed health care practitioners which take adverse licensure or professional review actions; and individuals and entities (including insurance companies) making payments as a result of medical malpractice actions or claims. They also establish procedures to enable individuals or entities to obtain information from the National Data Bank or to dispute the accuracy of National Data Bank information.

§ 60.3 Definitions.

"Act" means the Health Care Quality Improvement Act of 1986, Title IV of Pub. L. 99–660, as amended.

"Adversely affecting" means reducing, restricting, suspending, revoking, denying, or failing to renew State licensure, clinical privileges or membership in a health care entity, or certification by a specialty board.

"Board of Medical Examiners," or "Board," means a body or subdivision of such body which is designated by a State for the purpose of licensing, monitoring and disciplining physicians or dentists. This term includes a Board of Osteopathic Examiners or its subdivision, a Board of Dentistry or its subdivision, or an equivalent body as determined by the State. Where the Secretary, pursuant to section 423(c)(2) of the Act, has designated an alternate entity to carry out the reporting activities of § 60.7 due to a Board's failure to comply with § 60.7, the term "Board of Medical Examiners" or "Board" refers to this alternate entity.

"Clinical privileges" means the authorization by a health care entity to a physician, dentist or other health care practitioner for the provision of health care services, including privileges and membership on the medical staff.

"Dentist" means a doctor of dental surgery (D.D.S.) or doctor of medical dentistry (D.M.D.) legally authorized to practice dentistry by a State (or who, without authority, holds himself or herself out to be so authorized).

"Formal peer review process" means the conduct of professional review activities through formally adopted written procedures which provide for adequate notice and an opportunity for a hearing.

"Health care entity" means:

(a) A hospital;

(b) An entity that provides health care services, and engages in professional review activity through a formal peer review process for the purpose of furthering quality health care, or a committee of that entity; or

(c) A professional society or specialty board, or a committee or agent thereof, including those at the national, State, or local level, of physicans, dentists, or health care practitioners that engages in professional review activity through a formal peer review process, for the purpose of furthering quality health care.

For purposes of paragraph (b) of this definition, an entity includes: a health maintenance organization which is licensed by a State or determined to be qualified as such by the Department of Health and Human Services; and a group medical practice which shares facilities, personnel, medical records, and responsibilities, and has incomes set by contract.

"Health care practitioner" means an individual (other than a physician or dentist) who is licensed or otherwise authorized by a State to provide health care services.

"Hospital" means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

"Medical malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's or other health care practitioner's provision of or failure to provide health care services, including a legal action brought in any State or Federal Court or other adjudicative body.

"Physician" means a doctor of medicine (M.D.) or osteopathy (D.O.) legally authorized to practice medicine or surgery by a State (or who, without authority, holds himself or herself out to be so authorized).

"Professional review action" means an action or recommendation of a health care entity taken in the course of professional review activity, which action or recommendation is based on the professional competence or professional conduct of an individual physician, dentist or health care practitioner (which competence or conduct affects or could affect adversely the health or welfare of a patient or patients), and which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the physician, dentist or health care practitioner.

(a) This term includes:

(1) A formal decision not to take an action or make a recommendation described above; and

(2) Professional review activities related to a professional review action.

(b) This term excludes actions which are primarily based on:

(1) The physician's, dentist's or health care practitioner's association, or lack of association, with a professional society or association;

(2) The physician's, dentist's or health care practitioner's fees or the physician's, dentist's or health care practitioner's advertising or engaging in other competitive acts intended to solicit or retain business;

(3) The physician's, dentist's or health care practitioner's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;

(4) A physician's, dentist's or health care practitioner's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or

(5) Any other matter that does not relate to the competence or professional conduct of a physician, dentist or health care practitioner.

"Professional review activity" means an activity of a health care entity with respect to an individual physician, dentist or health care practitioner:

(a) To determine whether the physician, dentist or health care practitioner may have clinical privileges with respect to, or membership in, the entity;

(b) To determine the scope or conditions of such privileges or membership; or

(c) To change or modify such privileges or membership.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human services to whom the authority involved has been delegated.

"State" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Subpart B—Reporting of Information

§ 60.4 How information must be reported.

Information must be reported to the National Data Bank or to a Board of Medical Examiners as required under §§ 60.6 and 60.8, in such form and manner as the Secretary may prescribe. Persons and entities are responsible for the accuracy of information which they report to the National Data Bank. If

errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the National Data Bank.

§ 60.5 When information must be reported.

Information required under §§ 60.6, 60.7 and 60.8 must be submitted to the National Data Bank within 30 days following the action to be reported, beginning with actions occurring on or after the effective date of these regulations or the date of the establishment of the National Data Bank, whichever is later, as follows:

(a) *Malpractice Payments (§ 60.6)*—Persons or entities must submit information to the National Data Bank within 30 days from the date that a payment, as described in § 60.6, is made. If required under § 60.6, this information must be submitted simultaneously to the appropriate State licensing board.

(b) *Licensure Actions (§ 60.7)*—The Board must submit information within 30 days from the date the licensure action was taken.

(c) *Adverse Actions (§ 60.8)*—A health care entity must report an adverse action to the Board within 20 days from the date the adverse action was taken. The Board must submit the information received from a health care entity within 10 days from the date on which it received this information. If required under § 60.8, this information must be submitted by the Board simultaneously to the appropriate State licensing board in the State in which the health care entity is located.

§ 60.6 Reporting medical malpractice payments.

(a) *Who must report.* Each person or entity, including an insurance company, which makes a payment under an insurance policy, self-insurance, or otherwise, in settlement of or in satisfaction in whole or in part of a claim or a judgment in a medical malpractice action, must report information as set forth in paragraph (b) to the National Data Bank and to the appropriate State licensing board(s) in the State in which the act or omission which gave rise to the medical malpractice claim occurred.

(b) *What information must be reported.* Persons or entities described in paragraph (a) must report the following information:

(1) With respect to the physician, dentist or health care practitioner for whose benefit the payment is made—

(i) Name,

(ii) Work and home addresses,

(iii) License number(s),

(iv) Drug Enforcement Administration registration number,

(v) Social Security number, if known, and if obtained and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a), and

(vi) Name of each hospital with which he or she is affiliated, if known;

(2) With respect to the reporting person or entity:

(i) Name and address of the person or entity making the payment, and

(ii) Name, title, and telephone number of the responsible official submitting the report on behalf of the entity;

(iii) Relationship of the reporting person or entity to the physician, dentist, or health care practitioner for whose benefit the payment is made.

(3) With respect to the judgment or settlement resulting in the payment:

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,

(ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,

(iii) Date of judgment or settlement,

(iv) Amount paid and date of payment,

(v) Amount of judgment or settlement and any conditions attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(vii) Other information as required by the Secretary and announced from time to time in the **Federal Register**.

(c) *Sanctions.* Any person or entity that fails to report information on a payment required to be reported under this section is subject to a civil money penalty of up to $10,000 for each such payment involved. This penalty will be imposed pursuant to procedures at 42 CFR Part 1003.

§ 60.7 Reporting licensure actions by Boards of Medical Examiners.

(a) *What actions must be reported.* Each Board of Medical Examiners must report to the National Data Bank any action—

(1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license;

(2) Which censures, reprimands, or places on probation a physician or dentist, for reasons relating to the physician's or dentist's professional competence or professional conduct; or

(3) Under which a physician's or dentist's license is surrendered.

(b) *Information that must be reported.* The Board must report the following information for each action:

(1) The physician's or dentist's name;

(2) The physician's or dentist's work and home address;

(3) The physician's or dentist's license number;

(4) The physician's or dentist's Drug Enforcement Administration registration number;

(5) The physician's or dentist's Social Security number, if known, and if obtained and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a);

(6) A description of the acts or omissions or other reasons for the action taken;

(7) A description of the Board action, the date the action was taken, and its effective date;

(8) Classification of the action per State reporting code; and

(9) Other information as required by the Secretary and announced from time to time in the **Federal Register**.

(c) *Sanctions.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.7.

§ 60.8 Reporting adverse actions on clinical privileges.

(a) *Reporting to the Board of Medical Examiners.*—(1) *Actions that must be reported and to whom the report must be made.* Each health care entity must report to the appropriate Board of Medical Examiners the following actions:

(i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(ii) Acceptance of the surrender of clinical privileges by a physician or dentist—

(A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(B) In return for not conducting such an investigation or proceeding; or

(iii) In the case of a health care entity which is a professional society, when it takes a professional review action which adversely affects the membership of a physician or dentist in the society.

(2) *Voluntary reporting on other health care practitioners.* A health care entity may report to the Board of Medical Examiners information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) of this section with

respect to other health care practitioners.

(3) *What information must be reported.* The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to the physician or dentist:

(i) Name;

(ii) Work and home address;

(iii) License number;

(iv) Drug Enforcement Administration registration number;

(v) Social Security number, if known, and if obtained and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a);

(vi) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender; and

(vii) Action taken, date the action was taken, and effective date of the action;

(viii) Other information as required by the Secretary and announced from time to time in the **Federal Register.**

(b) *Reporting by the Board of Medical Examiners to the National Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health care entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions.*—(1) *Health care entities.* If the Secretary has reason to believe that a health care entity has failed to report information in accordance with § 60.8, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not compiled with § 60.8, the Secretary will provide the entity with a written notice describing the noncompliance and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely;

(ii) The health care entity does not provide a statement of material factual issues in dispute; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the **Federal Register.** In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the **Federal Register.**

(2) *Board of Medical Examiners.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

Subpart C—Disclosure of Information by the National Data Bank

§ 60.9 Information which hospitals must obtain from the National Data Bank.

(a) *When information must be obtained.* Each hospital must request information from the National Data Bank concerning a physician, dentist or health care practitioner as follows:

(1) At the time a physician, dentist or health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and

(2) Every 2 years concerning any physician or health care practitioner who is on its medical staff (courtesy or otherwise), or has clinical privileges at the hospital.

(b) *Failure to obtain information.* Any hospital which does not obtain the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the National Data Bank concerning this physician, dentist or health care practitioner.

(c) *Reliance on the obtained information.* Each hospital may rely upon the information provided by the National Data Bank to the hospital. A hospital shall not be held liable for this reliance unless the hospital has knowledge that the information provided was false.

§ 60.10 Obtaining information from the National Data Bank.

(a) *Who may obtain information and what information may be available.* Information in the National Data Bank will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) A hospital that requests information concerning a physician, dentist or health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(2) A physician, dentist, or health care practitioner who requests information concerning himself or herself;

(3) Boards of Medical Examiners or other State licensing boards, and health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist or health care practitioner, or to which the physician, dentist or health care practitioner has applied for clinical privileges or appointment to the medical staff.

(4) An attorney, or individual acting on his own behalf, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist or health care practitioner who is also named in the action or claim. *Provided,* that this information will be disclosed only upon the submission of evidence that the hospital failed to obtain information from the National Data Bank as required by § 60.(9a), and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(5) A health care entity with respect to professional review activity; and

(6) A person of entity who requests information in a form which does not permit the identification of any particular health care entity, physician, other health care practitioner or patient.

(b) *Procedures for obtaining National Data Bank information.* Persons and entities may obtain information from the National Data Bank by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fee as described in § 60.11.

§ 60.11 Fees applicable to requests for information.

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the National Data Bank. These fees are authorized by section 427(b)(4) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137). They reflect the costs of processing requests for disclosure and of providing such information. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register.**

(b) *Criteria for determining the fee.* The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees;

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used;

(3) Postage—actual cost;

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

(c) *Assessing and collecting fees.*

(1) A request for information from the National Data Bank will be regarded as also an agreement to pay the associated fee.

(2) Normally, a bill will be sent along with or following the delivery of the requested information. However, in order to avoid sending numerous small bills to frequent requesters, the charges may be aggregated for certain periods. For example, such a requester may receive a bill monthly or quarterly.

(3) In the event that a requester has failed to pay previous bills, the requester will be required to pay the fee before a request for information is processed.

(4) Fees must be paid by check or money order made payable to "U.S. Department of Health and Human Services" or to the unit stated in the billing and must be sent to the billing unit. Payment must be received within 30 days of the billing date or the applicant will be charged interest and a late fee on the amount overdue.

§ 60.12 Confidentiality of National Data Bank information.

(a) *Limitations on disclosure.* Information reported to the National Data Bank is considered confidential and shall not be disclosed, except as specified in § 60.9, § 60.10 and § 60.13. Persons and entities which receive information from the National Data Bank must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

(b) *Penalty for violations.* Any person who violates paragraph (a) of this section shall be subject to a civil money penalty of up to $10,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR Part 1003.

§ 60.13 How to dispute the accuracy of National Data Bank information.

(a) *Who may dispute National Data Bank information.* Any physician, dentist or health care practitioner may dispute the accuracy of information in the National Data Bank concerning himself or herself.

(b) *Procedures for filing a dispute.* A physician, dentist or licensed health care practitioner may dispute National Data Bank information by:

(1) Informing the Secretary and the reporting entity, in writing, of the disagreement, and the basis for it;

(2) Requesting simultaneously that the disputed information be entered into a "disputed" status and be reported to inquirers as being in a "disputed" status; and

(3) Entering into discussion with the reporting entity to resolve the dispute.

(c) *Procedures for revising disputed information.* (1) If the reporting entity revises the information originally submitted to the National Data Bank, the Secretary will notify all entities to whom reports have been sent that the original information has been revised.

(2) If the reporting entity fails to revise the reported information, the Secretary will, upon request, review the written information submitted by both parties (the physician, dentist or health care practitioner, and the reporting entity), and related information which is available, including, but not limited to, that available from malpractice insurers, test examination results, State administrative procedures and judicial decisions, and the Health Care Financing Administration. After review, the Secretary will either:

(i) Continue to note the information as "disputed" if the Secretary concludes that the information is accurate, and include a brief statement by the physician, dentist or health care practitioner describing the disagreement concerning the information, or

(ii) Send corrected information to previous inquiries if the Secretary concludes that the information was incorrect.

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Part VIII

Department of Justice

Immigration and Naturalization Service

8 CFR Part 245a

Adjustment of Status for Certain Aliens; Interim Rule With Request for Comments

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1106-88]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of aliens who have been residing illegally in the United States since before January 1, 1982. The Service published implementing regulations at 52 FR 16205 (May 1, 1987). The Service found it necessary to amend these regulations and published an interim rule at 52 FR 43843 (November 17, 1987). This rule will amend the regulations further to provide for another class of eligible aliens, specifically, certain nationals of countries for which extended voluntary departure (EVD) was made available at any time during the 5 year period ending on November 1, 1987.

EFFECTIVE DATE: Interim rule is effective March 21, 1988. Comments must be received on or before April 20, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The regulations, published on May 1, 1987, were subsequently amended on November 17, 1987. On December 22, 1987, the Department of State Authorization Bill, Pub. L. 100-204 was signed into law. Section 902 of the bill establishes another class of eligible aliens who are eligible to apply for temporary residence status as provided by the Immigration Reform and Control Act of 1986. During the 5 year period ending on November 1, 1987, EVD was provided to the nationals of Poland, Ethiopia, Afghanistan, and Uganda. The bill extends most of the same benefits, conditions, and responsibilities to qualifying applicants as does section 245A of the INA. The eligibility requirements and application period differ from those for aliens who are under the scope of the Immigration Reform and Control Act of 1986. Therefore, the Service is creating a new regulatory section—"245a.4" entitled "Adjustment to Lawful Resident Status of Certain Nationals of Countries for Which Extended Voluntary Departure has been made Available."

Part 245a is being revised at the heading to reflect implementation of Pub. L. 100-204, section 902.

Section 245a.4(a) is being established to define terms applicable to this class of aliens.

Section 245a.4(b) is being established to provide for the application for temporary residence of this class of aliens.

Section 245a.4(c) is being established to provide for the application for adjustment from temporary to permanent resident status for this class of aliens.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

This rule contains information collection requirements which have been cleared by the OMB under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The part heading for Part 245a is revised to read as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

2. The authority citation for Part 245a is revised to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359, 8 U.S.C. 1101 note and Pub. L. 100-204, 101 Stat. 1331.

3. Section 245a.4 is added to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

(a) *Definitions.* As used in this section.

(1) "Act" means the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(2) "Service" means the Immigration and Naturalization Service (INS).

(3) "Resided continuously" means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between July 21, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application. An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States pursuant to the stateside criteria program, shall be considered as having "resided continuously."

(4) "Continuous residence" means that the alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and of applying for permanent resident status, unless the alien can establish that due to emergent

reasons the return to the United States could not be accomplished within the time period(s) allowed.

(5) "To make a determination" means obtaining and reviewing all information required to adjudicate an application for the benefit sought and making a decision thereon. If fraud, willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document, knowingly making a false statement or representation, or any other activity prohibited by the Act is established during the process of making the determination on the application, the Service shall refer to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(6) "Continuous physical presence" means actual continuous presence in the United States since December 22, 1987, until filing of any application for adjustment of status. Aliens who were outside of the United States after enactment may apply for temporary residence if they reentered prior to March 21, 1988, provided they meet the continuous residence requirements, and are otherwise eligible for legalization.

(7) "Brief, casual, and innocent" means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, for not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(8) "Brief and casual" means temporary trips abroad as long as the alien established a continuing intention to adjust to lawful permanent resident status. However, such absences must not exceed the specific periods of time required in order to maintain continuous residence.

(9) "Certain nationals of countries for which extended voluntary departure has been made available on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987" is limited to nationals of Poland, Afghanistan, Ethiopia, and Uganda.

(10) "Public cash assistance" means income or needs-based monetary assistance to include but not limited to supplemental security income, received by the alien or his or her immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(11) "Designated entity" means any state, local, church, community, farm labor organization, voluntary organization, association of agricultural employers or individual determined by the Service to be qualified to assist aliens in the preparation of applications for legalization status.

(12) "Through the passage of time" means through the expiration date of the nonimmigrant permission to remain in the United States, including any extensions and/or change of status.

(13) "Prima facie eligibility" means eligibility is established if the applicant presents a completed I-687 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this part.

(b) *Application for temporary residence.*—(1) *Application for temporary residence.* (i) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan who has resided continuously in the United States since prior to July 21, 1984, and who believes that he or she meets the eligibility requirements of section 245A of the Act must make application within the twenty-one-month period beginning on March 21, 1988, and ending on December 22, 1989.

(ii) An alien who fails to file an application for adjustment of status to that of a temporary resident under this section during the respective time period(s), will be statutorily ineligible for such adjustment of status.

(2) *Eligibility.* (i) The following categories of aliens who are not otherwise excludable under section 212(a) of the Act are eligible to apply for status to that of a person admitted for temporary residence:

(A) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, (other than an alien who entered as a nonimmigrant) who establishes that he or she entered the United States prior to July 21, 1984, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(B) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and whose period of authorized admission expired through the passage of time prior to January 21, 1985, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(C) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and who applied for asylum prior to July 21, 1984, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(D) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, who would otherwise be eligible for temporary resident status and who establishes that he or she was in an unlawful status prior to July 21, 1984, and who subsequently reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. An alien described in this paragraph must have received a waiver of section 212(a)(19) as an alien who entered the United States by fraud.

(E) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and was a nonimmigrant who entered the United States in the classification A, A-1, A-2, G, G-1, G-2, G-3, or G-4, for Duration of Status (D/S), and whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to July 21, 1984, and who thereafter continued to reside in the United States in an unlawful status.

(F) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and who was a nonimmigrant who entered the United States as an F, F-1, or F-2 for Duration of Status (D/S), and whose completed a full course of studies, including practical training (if any), and whose time period to depart the United States after completion of studies expired prior to July 21, 1984, and who has thereafter continued to reside in the United States in an unlawful status. A dependent F-2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Service Form I-94, Arrival-Departure Record that extended beyond July 21, 1984 is considered eligible if the principal F-1 alien is found eligible.

(3) *Ineligible aliens.* (i) An alien who has been convicted of a felony, or three or more misdemeanors.

(ii) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group or political opinion.

(iii) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived.

(4) *Documentation.* Evidence to support an alien's eligibility for temporary residence status shall include documents establishing proof of identity, proof of nationality, proof of residence, and proof of financial responsibility, as well as photographs, a completed fingerprint card (Form FD–258), and a completed medical report of examination (Form I–693). All documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied. Failure by an applicant to authorize release to INS of information protected by the Privacy Act and/or related laws in order for INS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for the four categories of documentation are discussed as follows:

(i) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(D) Driver's license or similar document issued by a state if it contains a photo;

(E) Baptismal Record/Marriage Certificate; or

(F) Affidavits.

(ii) *Proof of nationality.* Evidence to establish nationality is listed as follows:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(iii) *Assumed names*—

(A) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraphs (b)(4) (i) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(B) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other eividence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight.

(iv) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any combination of the following:

(A) Past employment records, which may consist of pay stubs, W–2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, a state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organizations must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

(*1*) Alien's address at the time of employment;

(*2*) Exact period of employment;

(*3*) Periods of layoff;

(*4*) Duties with the company;

(*5*) Whether or not the information was taken from official company records; and

(*6*) Where records are located, whether the Service may have access to the records.

If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of paragraphs (b)(4)(iv)(A) (*5*) and (*6*) of this section. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

(B) Utility bills (gas, electric, phone, etc.) receipts, or letters from companies showing the dates during which the applicant received service are acceptable documentation.

(C) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States must show the name of school and periods of school attendance.

(D) Hospital or medial records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

(E) Attestations by churches, unions, or other organizations as to the appicant's residence by letter which:

(*1*) Identify applicant by name;

(*2*) Are signed by an official (whose title is shown);

(*3*) Show inclusive dates of membership;

(*4*) State the address where applicant resided during membership period;

(*5*) Include the seal of the organization impressed on the letter or the letterhead of the organization; if the organization has letterhead stationery;

(*6*) Establish how the author knows the applicant; and

(*7*) Establish the origin of the information being attested to.

(F) Additional documents to support the applicant's claim may include:

(*1*) Money order receipts for money sent in or out of the country;

(*2*) Passport entries;

(*3*) Birth certificates of children born in the United States;

(*4*) Bank books with dated transactions;

(*5*) Letters or correspondence between applicant and other person or organization;

(*6*) Social Security card;

(*7*) Selective Service card;

(*8*) Automobile license receipts, title, vehicle registration, etc.;

(*9*) Deeds, mortgages, contracts to which applicant has been a party;

(*10*) Tax receipts;

(*11*) Insurance policies, receipts, or letters; and

(*12*) Any other relevant document.

(v) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges unless the applicant demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance. Generally, the evidence of employment submitted

under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is likely to become a public charge will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(*A*) Evidence of a history of employment (i.e., employment letter, W–2 forms, income tax returns, etc.);

(*B*) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or

(*C*) Form I–134, Affidavit of Support, completed by a spouse on behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the Affidavit of Support shall be extended to other family members in unusual family circumstances.

(vi) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

(vii) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(5) *Filing of application.* (i) The application must be filed on Form I–687 at an office of a designated entity or at a Service office within the jurisdiction of the district wherein the applicant resides. If the application is filed with a designated entity, the alien must have consented to having the designated entity forward the application to the Service office. In the case of applications filed at a Service office, the district director may, at his or her discretion:

(A) Require the applicant to file the application in person; or

(B) Require the applicant to file the application by mail; or

(C) Permit the filing of applications whether by mail or in person.

The applicant must appear for a personal interview at the Service office as scheduled. If the applicant is 14 years of age or older, the application must be accompanied by a completed form FD–258 (Applicant Card).

(ii) At the time of the interview, whenever possible, original documents must be submitted except the following: official government records; employment or employment-related records maintained by employers, union, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear the seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of the original document is desired by the applicant, the document must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Document Analysis Unit at the Regional Processing Facility having jurisdiction over the Service office to which the documents were submitted.

(iii) A separate application (I–687) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check, or certified bank check, made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(6) *Filing date of application.* The date the alien submits a completed application to a Service office or designated entity shall be considered the filing date of the application, provided that in the case of an application filed at a designated entity the alien has consented to having the designated entity forward the application to the Service office having jurisdiction over the location of the alien's residence. Designated entities are required to forward completed applications to the appropriate Service office within sixty days of receipt.

(7) *Selective Service registration.* At the time of filing an application under this section, male applicants over the age of 17 and under the age of 26, are required to be registered under the Military Selective Service Act. An applicant shall present evidence that he has previously registered under that Act in the form of a letter of acknowledgement from the Selective Service System, or such alien shall present a completed and signed Form SSS–1 at the time of filing Form I–687 with the Immigration and Naturalization Service or a designated entity. Form SSS–1 will be forwarded to the Selective Service System by the Service.

(8) *Continuous residence.* (i) For the purpose of this Act, an applicant for temporary residence status shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

(A) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between July 21, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(B) The alien was maintaining a residence in the United States; and

(C) The alien's departure from the United States was not based on an order of deportation.

(ii) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application under this section.

(9) *Medical examination.* An applicant under this part shall be required to submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon shall report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status. Results of the medical examination must be presented to the Service at the time of interview and shall be incorporated into the record. Any applicant certified under paragraphs (1), (2), (3), (4) or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S.

Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(10) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Forms I–688A and I–688. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14 years of age, or when it is impractical because of the health or advanced age of the applicant.

(11) *Applicability of exclusion grounds.*—(i) *Grounds of exclusion not to be applied.* Paragraphs (14), (workers entering without labor certification); (20), (Immigrants not in possession of a valid entry document); (21), (Visas issued without compliance with section 203); (25), (Illiterates); and (32) (Graduates of non-accredited medical schools) of section 212(a) of the Act shall not apply to applicants for temporary resident status.

(ii) *Waiver of grounds of exclusion.* Except as provided in paragraph (b)(11)(iii) of this section, the Attorney General may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I–690. When an application for waiver of grounds of excludability is filed jointly with an application for temporary residence under this section, it shall be accepted for processing at the Service office. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the Service office, it shall be forwarded to the appropriate Regional Processing Facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances. An application for waiver of grounds of excludability under this part shall be approved or denied by the director of the Regional Processing Facility in whose jurisdiction the alien's application for adjustment of status was filed except that in cases involving clear statutory ineligibility or fraud, such application may be denied by the district director in whose jurisdiction the application is filed, and in cases returned to a Service office for re-interview, such application may be approved at the discretion of the district director. The applicant shall be notified of the decision and, if the application is denied, of the reason therefore. Appeal from an adverse decision under this part may be taken by the applicant on Form I–694 within thirty (30) days after the service of the notice only to the Service's Administrative Appeals Unit pursuant to the provisions of § 103.3(a) of this chapter.

(iii) *Grounds of exclusion that may not be waived.* Notwithstanding any other provision of the Act, the following provisions of section 212(a) may not be waived by the Attorney General under paragraph (b)(11)(ii) of this section:

(A) Paragraphs (9) and (10) (criminals);

(B) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana;

(C) Paragraphs (27) (prejudicial to the public interest), (28) (communist), and (29) (subversive);

(D) Paragraph (33) (participated in Nazi persecution).

(iv) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself and his or her family, even though his or her income may be below the poverty level, may be admissable under this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

(v) *Public assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

(12) *Continuous physical presence since December 22, 1987.* (i) An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since December 22, 1987. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legislation if they reentered prior to March 21, 1988, and meet the continuous residence requirements and are otherwise eligible for legalization.

(ii) A brief, causal, and innocent absence means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(13) *Departure.* (i) During the time period from the date that an alien's application establishing prima facie eligibility for temporary resident status is reviewed at a Service office and the date status as a temporary resident is granted, the alien applicant can only be readmitted to the United States provided his or her departure was authorized under the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(ii) An alien whose application for temporary resident status has been approved may be admitted to the United States upon return as a returning temporary resident provided he or she:

(A) Is not under departure proceedings, such proceedings having been instituted subsequent to the approval of temporary resident status. A temporary resident alien will not be considered deported if that alien departs the United States while under an outstanding order of deportation issued prior to the approval of temporary resident status;

(B) Has not been absent from the United States more than thirty (30) days on the date application for admission is made;

(C) Has not been absent from the United States for an aggregrate period of more than ninety (90) days since the date the alien was granted lawful temporary resident status;

(D) Presents Form I–688;

(E) Presents himself or herself for inspection; and

(F) Is otherwise admissible.

(iii) The periods of time in paragraphs (b)(13)(ii)(B) and (C) of this section may be waived at the discretion of the Attorney General in cases where the absence from the United States was due merely to a brief and causal trip abroad due to emergent or extenuating circumstances beyond the alien's control.

(14) *Employment and travel authorization.*—(i) *General.* Authorization for employment and travel abroad for temporary resident status applicants under this section may only be granted by a Service office. INS district directors will determine the Service location for the completion of processing of travel documentation. In the case of an application which has been filed with a designated entity, employment authorization may only be granted by the Service after the application has been properly received at the Service office.

(ii) *Employment and travel authorization to the granting of temporary resident status.* (A) Permission to travel abroad and accept employment may be granted to the applicant after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status. Permission to travel abroad may be granted in emergent circumstances in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status.

(B) If an appointment cannot be scheduled within thirty (30) days, authorization to accept employment will be given, valid until the scehduled appointment date. The appointment letter will be endorsed with the temporary employment authorization. Form I–688A, Employment Authorization, will be given to the applicant after an interview has been completed by an immigration officer unless a formal denial is issued by a Service office. This temporary employment authorization will be restricted to six months duration, pending final determination on the application for temporary resident status.

(iii) *Employment and travel authorization upon grant of temporary resident status.* Upon grant of an application for adjustment to temporary resident status by a Regional Processing Facility, the processing facility will forward a notice of approval to the alien at his or her last known address, or to his or her legal representative. The alien will be required to return to the Service office where the application was initially received, surrender the I–688A previously issued, and will be issued Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

(iv) *Revocation of employment authorization upon denial of temporary resident status.* Upon denial of an application for adjustment to temporary resident status the alien will be notified that if a timely appeal is not submitted, employment authorization shall be automatically revoked on the final day of the appeal period.

(15) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefore. An appeal from an adverse decision under this part may be taken by the applicant on Form I–694.

(16) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the Regional Processing Facility within thirty (30) days after service of the notice of denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period consists of any time required for service or receipt by mail, including the 3-day allotment for mail receipt as stated in § 103.5a(b) of this chapter.

(17) *Motions.* The Regional Processing Facility director may sua sponte reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within 45 days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(18) *Certifications.* The Regional Processing Facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact.

(19) *Date of adjustment to temporary residence.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Service office.

(20) *Termination of temporary resident status.*—(i) *Termination of temporary resident status (General).* The status of an alien lawfully admitted for temporary residence under this section may be terminated at any time. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurrence of any of the following:

(A) It is determined that the alien was ineligible for temporary residence under this section and 245A of the Act;

(B) The alien commits an act which renders him or her inadmissible as an immigrant unless a waiver is obtainable, as provided in this part;

(C) The alien is convicted of any felony, or three or more misdemeanors;

(D) The alien fails to file for adjustment of status from temporary resident to permanent resident within thirty-one (31) months of the date he or she was granted status as a temporary resident.

(ii) *Procedure.* Termination of an alien's status will be made only on notice to the alien sent by certified mail directed to his or her last known address, and to his or her representative. The alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within thirty (30) days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the Regional Processing Facility shall notify the alien of the decision and the reason for the termination, and further notify the alien that any Service Form issued to the alien authorizing employment and/or travel abroad, or any Form I–688, Temporary Resident Card previously issued to the alien will be declared void by the director of the Regional Processing Facility within thirty (30) days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the Regional Processing Facility within thirty (30) days after the service of the notice of termination. If no appeal is filed within that period, the

official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(iii) *Termination not construed as rescission under section 246.* For the purposes of this part the phrase "termination of status" of an alien granted lawful temporary residence under this section shall not be construed to necessitate a rescission of status as described in section 246 of the Act, and the proceedings required by the regulations issued thereunder shall not apply.

(iv) *Return to unlawful status after termination.* Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the status held prior to the adjustment, and render him or her amendable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate.

(21) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under this section is not entitled to submit a petition pursuant to section 203(a)(2) or to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence.

(22) *Declaration of intending citizen.* An alien who has been granted the status of temporary resident under this section may assert a claim of discrimination on the basis of citizenship status under section 274B of the Act only if he or she has previously filed Form I–772 (Declaration of Intending Citizen) after being granted such status. The Declaration of Intending Citizen is not required as a basis for filing a petition for naturalization; nor shall it be regarded as a right to United States citizenship; nor shall it be regarded as evidence of a person's status as a resident.

(c) *Application for adjustment from temporary to permanent resident status. Application period for permanent residence.* An alien who has resided in the United States for a period of eighteen (18) months after the granting of temporary resident status may make application for permanent resident status during the twelve month period beginning on the day after the requisite eighteen months temporary residence has been completed. Applications for lawful permanent residence will be accepted at Service offices beginning on September 21, 1989.

Dated March 15, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88–6176 Filed 3–18–88; 8:45 am]

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500-599	21.00	Apr. 1, 1987
600-799	7.00	Apr. 1, 1987
800-1299	13.00	Apr. 1, 1987
1300-End	6.00	Apr. 1, 1987
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0-199	14.00	Apr. 1, 1987
200-499	26.00	Apr. 1, 1987
500-699	9.00	Apr. 1, 1987
700-1699	18.00	Apr. 1, 1987
1700-End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0-1.60	12.00	Apr. 1, 1987
§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1987
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
§§ 1.641-1.850	17.00	Apr. 1, 1987
§§ 1.851-1.1000	27.00	Apr. 1, 1987
§§ 1.1001-1.1400	16.00	Apr. 1, 1987
§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
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50-299	14.00	Apr. 1, 1987
300-499	15.00	Apr. 1, 1987
500-599	8.00	[3] Apr. 1, 1980
600-End	6.00	Apr. 1, 1987
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987
29 Parts:		
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700–End	18.00	July 1, 1987
31 Parts:		
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34 Parts:		
1–299	20.00	July 1, 1987
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400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
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7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
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101	23.00	July 1, 1987
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44	18.00	Oct. 1, 1987
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46 Parts:		
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500–End	10.00	Oct. 1, 1987
47 Parts:		
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.